



A Report Related to the Licence Appeal Tribunal (LAT) and Tarion 2006 - 2020

Submitted to:

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Please submit response, questions/comments to: info@canadiansforproperlybuilthomes.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).

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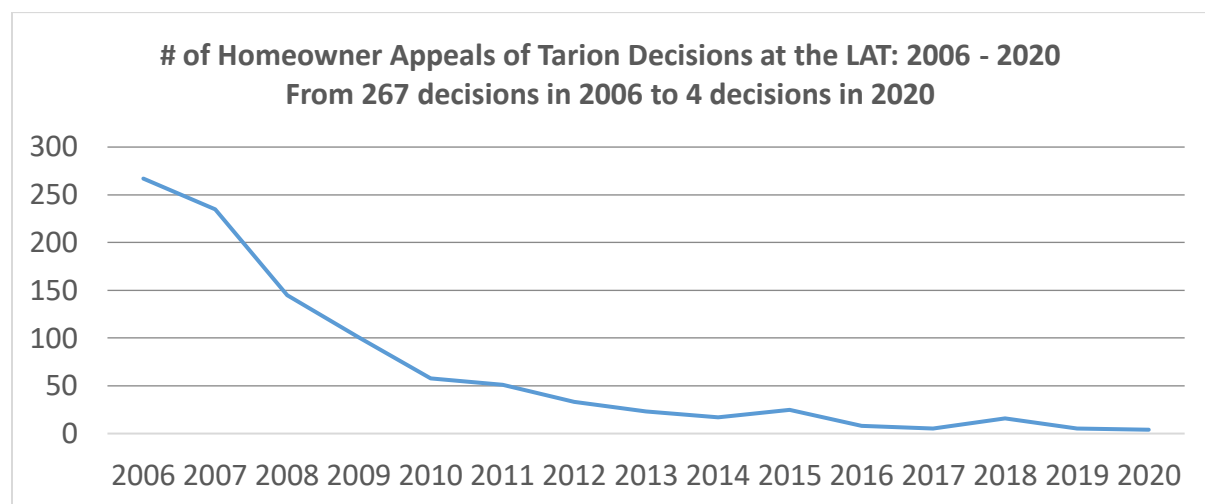
Report related to the LAT Decisions and the *Ontario New Home Warranties Plan Act*
Analysis of the period 2006-2020 + Update since our 2019 report

Overview re Homeowners' Success at the LAT in 2020 related to Tarion

Another year, and another devastating result for purchasers of newly built homes fighting the Tarion Warranty Corp. (Tarion) at the Licence Appeal Tribunal (LAT). Only four decisions were issued in 2020, and those four decisions involved eight items. One of the eight appeals was successful - a 12.5% success rate in 2020. This is a slight improvement in success rate from 2019 when there was a 100% failure rate. Ontario's purchases of newly built homes have lost approximately 85% of the items appealed at the LAT in relation to Tarion's decisions since 2006 when CPBH started our annual analysis.

Again in 2020, none of these homeowners were represented by a lawyer – they were all self-represented. Tarion is **always** represented by lawyers/paralegals. One of these homeowners was supported by a home inspector who is also a professional engineer but that didn't help – that case lost as well.

Perhaps the real story is Ontarians' refusal to go to the LAT re Tarion



In 2006 there were 267 decisions and in 2020 there were four. The above graph shows the steep decline in LAT decisions re Tarion over the years. As we have noted in our previous analyses, a number of officials have confirmed serious operational issues at the LAT, and lack of appropriate adjudicator training. Further, the LAT has no authority to enforce its decisions. (Yes, there have been cases when the homeowner did win at the LAT, and then Tarion refused to follow the LAT order.) All of these factors have led to almost no homeowners willing to go to the LAT to fight Tarion's decisions in the past decade.

Unacceptably, oversight bodies such as the Ministry of the Attorney General, the Office of the Ombudsman of Ontario, and the Office of the Auditor General of Ontario have not responded positively when CPBH has written to them annually for assistance/investigations/audits since 2007. In the meantime, while complaints about Tarion continue, and Ontario housing starts have risen considerably

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(e.g., in 2011 there were 56,557 housing starts in Ontario, and in 2020 there were 78,916), the number of homeowners willing to go to the LAT to resolve their disputes with Tarion has plummeted as evidenced by the graph above. This begs the question: Why have these oversight bodies simply sat back as the number of decisions plummeted and confidence in the LAT deteriorated to this level?

What happens when people refuse to go to the LAT to try to resolve disputes with Tarion?

There are a number of possibilities, e.g.,

- They continue to live in the houses with the construction defects/Ontario Building Code violations. For example, we are aware of some homeowners who have been freezing in their homes for more than a decade due to HVAC Code violations.
- They fix the construction defects/Ontario Building Code violations themselves.
- They pursue their issues in regular courts.
- They “patch and run” – selling the home to the next unsuspecting homeowner without disclosing the issues.

Other key events since CPBH’s last report in May 2020

- There was a new Tribunal Chair appointed in June 2020 – Mr. Sean Weir. CPBH contacted Mr. Weir and Mr. Stephen Jovanovic (the Associate Chair) responded. CPBH volunteers engaged with Mr. Jovanovic (via Zoom and emails), and sadly, found more or less the same sorts of disappointing responses and attitude as the previous leadership.
- There has been negative press about Ontario’s Tribunals generally. For example, [Justice Delayed and Denied in Ontario’s Tribunals – Slaw](#) in which author Noel Semple said: “...it seems that our government has chosen to surreptitiously undermine the statutes, by starving the tribunals of the resources and personnel necessary for them to function...”. (Note: It is much more complicated for appeals related to Tarion. Home/condo construction is very complex, typically involving more than 70 trades, sophisticated technology, etc.)
- CPBH volunteers met with the Attorney General, Minister Downey. We provided an overview of the issues, and the abysmal public perception – that the vast majority of consumers have lost confidence in the LAT for Tarion appeals – and that former Minister Naqvi advised CPBH in 2018 that the Ministry was “monitoring” these issues. Minister Downey initially was not willing to commit to any action, but the one thing that Minister Downey ultimately did advise is that they have a complaints process. What a disappointing and inadequate response: These problems have been known for many years, for example:

“...A less litigious and adversarial process would also address concerns the ministry has heard from homeowners that they are dissuaded from pursuing LGAT appeals because the existing processes are not transparent, and are complicated, time-consuming, costly and unbalanced...”

- o Frank Denton, Assistant Deputy Minister of the Ministry of Government and Consumer Services, Oct. 7, 2014.

CPBH's Position:

- The Government of Ontario must immediately replace the LAT for these appeals as this is a critical component of the consumer protection and justice system;
- The replacement organization must have:
 - o Adjudicators with specialized training related to new home construction, as well as training related to working with self-represented litigants;
 - o Operational processes that are fair, efficient, transparent and easy to navigate;
 - o The ability to enforce its own decisions.
- A substantial public relations campaign to help restore faith in the legal system is also required.