



Open Letter to Premier Wynne

April 9, 2014

Premier Kathleen Wynne
Room 281, Queen's Park
111 Wellesley Street West
Toronto, Ontario M7A 1A1

Dear Premier Wynne:

I sent an Open Letter to you on March 9, 2014 regarding the Tarion Warranty Corporation, and I have not yet had a response. I am now in receipt of a copy of a letter dated March 31, 2014 sent to you by a group of Tarion employees (attached). This letter from these Tarion employees sheds some light on the serious concerns held by these Tarion employees. Many of these same issues have been communicated to you already by concerned consumers, members of the Ontario Legislature, the media and Canadians for Properly Built Homes (CPBH).

These Tarion employees demonstrated great courage in taking this step to send this letter to you. They, as well as all concerned citizens, deserve your response. I will repeat the same three questions from my March 9, 2014 Open Letter:

When will you direct your Government House Leader to bring MPP Hillier's Private Members Motion 50 to the Floor for debate and vote?

When will you bring Accountability and Transparency to the Tarion Warranty Corporation?

Will you stand up for Ontario consumers before the building industry?

Yours truly,

Dr. Karen Somerville, PhD
President

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March 31, 2014

Premier Kathleen Wynne
Room 281, Queen's Park
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Premier Wynne:

Many of us at Tarion are becoming increasingly concerned. Over the past year many issues on how Tarion conducts its business have been brought to the government's attention by consumers, media, opposition members and Dr. Somerville from Canadians for Properly Built Homes. It seems that these concerns about Tarion's transparency and methods of operation continue to fall on deaf ears.

If Minister MacCharles and you believe that the Ontario Home Builders Association through the builders on our Board, who are the majority do not control our business then you have been seriously misled. As a result of some of the media attention and such our Board decided to expand its members to include an additional voting member. We have now gone from fifteen members to sixteen. The Ontario Home Builders Association still controlling eight of the positions, five ministry appointments and now three at-large members. Our understanding is should there be a tied vote then the Chair has two votes. We were advised that the Chair may not vote the same way twice, really! Does this apparent attempt to satisfy peoples concern over the control of Tarion make sense to you Premier Wynne? We are now hearing that Mr. Frank Giannone, President of Fram Building Group will be the next Chair.

Many are struggling with the recent success of Ms. Siloni Waraich who is our Director of Stakeholder Relations recently being elected as President of the Ontario Liberal Party. If not a conflict of interest then certainly a perceived one, as many of us believe.

Tarion as well as the government has held up the great survey results for many years from builders and consumers showing an overall rating of some 80% plus in satisfaction with Tarion. The builders picked for these surveys represent a very small percentage of our registered builders. Premier Wynne were the results being manipulated? Tarion's own internal survey about employee engagement is directly tied to our bonuses. Poor survey responses equals a lower rating. Howard and our Human Resource department do say it only equates to a small financial amount. How many people can afford to give any amount away? Do I tell them what I need to and keep a little bit more or not? Is this really an ethical transparent process or a good way to manipulate the responses?

Many of us are hearing that the residential units that will be used by the athletes and others during the Pan Am games in 2015 will be sold as condominium units afterwards with warranty coverage. This was at the 'urging' of the government we have heard. We do not know if that is true or not. Any previous requests for coverage for similar situations like this would be totally denied. Our belief is in order to provide warranty coverage Tarion needed to enter into contractual arrangements with the builder and vendor to do so. If a regulator needs to sign contracts with others in order to fulfill their responsibility is something not wrong with the system or is this how a Regulator normally conducts business?

Last November Canadians for Properly Built Homes released the "Top 10 List" of questions that should be asked by the Auditor when conducting a Value for Money audit of Tarion. Those question still need to be answered, they are valid. As a not for profit corporation that pretty much operates from fees builders

* Copy attached

basically collect from homeowners we seem to put 10's of millions of dollars away each year. Are we truly delivering the necessary services and really regulating the builders? We don't believe so.

Some 37 years ago the Ontario New Home Warranties Plan Act was put into place. Premier Wynne can you honestly say that it is still current today? How many twenty five and thirty plus storey condominiums were being built in the late seventies? Has consumer expectations not changed since then? Does our Act really regulate the building industry compared to today's standards? And again, why is it necessary to enter into agreements to provide warranty protection? We would find it hard to accept a response from the government other than 'it needs to be modernized'. We use the term modernized as the Honourable MacCharles used it in her statement about looking forward to reviewing the feedback the ministry received about modernizing the Condominium Act. The Condominium Act is not that old is it? When compared to other consumer protection Acts ours appear to be lacking in more ways than one can count.

The government needs to have the Provincial Auditor conduct a full audit of Tarion or is it afraid to find out what is really going on and just let Tarion and the OHBA continue on with their 37 year relationship.

We are obviously concerned about our jobs so why the anonymity. Does it really take employees identifying themselves for the government to put two and two together?

Respectfully sent.

Cc: Mr. Tim Hudak; Progressive Conservative Party of Ontario
Ms. Andrea Horwath; New Democratic Party of Ontario
Ms. Bonnie Lysyk; Auditor General of Ontario
Mr. Andre Marin, Office of the Ombudsman of Ontario
Dr. Karen Somerville; Canadians for Properly Built Homes



NEWS RELEASE

OTTAWA, ONTARIO – Nov. 12, 2013 – Several Ontario MPPs are calling for a Value for Money (VFM) audit of the Tarion Warranty Corporation by the Auditor General of Ontario. CPBH agrees that a VFM audit of Tarion is necessary – immediately - and is announcing its **“Top 10 List”** of key areas that that should be included in the scope of such a VFM audit. Related questions are also included for each key area.

“Top 10 List”

of key areas that that should be included in the scope of the VFM audit of the Tarion Warranty Corporation by the Auditor General of Ontario, and related questions

1. Governance of Tarion:
 - a. As per the Toronto Star investigative published July 6, 2013: *“Former Tarion CEO Greg Gee says it was a challenge to get approvals from the board for consumer initiatives and funding during his tenure.”*
 - i. What were the challenges that Mr. Gee faced concerning consumer initiatives and why did he face them?
 - ii. Have things improved on this front in the past five years since Mr. Gee left the organization?
 - b. The 2009 Delegated Administrative Authority Model Review recommended an: *“Overhaul of the governance structure respecting Board composition...”* (p. 300). Yet this has not yet taken place. Why is that?
 - i. Note: We do not consider the changes to Tarion’s By-law 1 approved Oct. 10, 2013 to be adequate or an “overhaul”.
 - c. What role, if any, has the board played in delaying accurate, prompt and complete builders’ performance records on the Tarion web-site. (Refer to Toronto Star investigative report published on July 6, 2013 that referred to “secret” records.)
 - d. What should be the Tarion’s Board composition, e.g., builders/builders’ representatives vs. Ministerial appointees vs. consumers?
2. High velocity Heating, Ventilation and Air-Conditioning (HVAC) - High velocity HVAC has been a very serious issue for many Ontario home purchasers (as evidenced by the CTV W-Five report that aired in 2012 – : <http://www.ctvnews.ca/seeking-answers-for-home-heating-woes-1.776550>).
 - a. When was this issue first reported to Tarion? (An HVAC expert suggested Tarion started receiving claims for these systems in the mid-1990s.)



- b. How many consumer claims related to high velocity HVAC have been received by Tarion since these were first reported to Tarion – by year?
 - c. How many consumer claims related to high velocity HVAC have been rejected by Tarion since these were first reported to Tarion – by year?
 - d. As per its 1976 Letters Patent, Tarion is: *“through research programs, to achieve a progressive improvement in the quality of housing in Ontario in all aspects.”*
 - i. What research did Tarion conduct, or have conducted, concerning these high velocity HVAC problems? If conducted, when did this research take place? Was it adequate?
 - e. Tarion continues to reject homeowner claims for these systems. Has Tarion handled these claims appropriately?
 - f. In the 2012 CTV W-Five report, the Tarion CEO (Bogach) said that he still didn't know if the issue with these systems was the installation, design or apparatus. Given the period of time over which Tarion has been receiving claims for these systems, did Tarion handle these claims appropriately up to the point of the W-Five report?
 - g. What has Tarion done to address this issue since the W-Five report aired in March 2012? Has this action been appropriate and sufficient?
3. Heating, Ventilation and Air-Conditioning (HVAC) generally
- a. Since 2000, what is the total number of HVAC claims received by Tarion?
 - b. How many of these claims have been rejected by Tarion since 2000?
 - c. Of those HVAC claims accepted by Tarion since 2000, what is the average amount of repair cost per claim?
4. Research - As per its 1976 Letters Patent, Tarion is: *“through research programs, to achieve a progressive improvement in the quality of housing in Ontario in all aspects.”*
- a. In the past 10 years, what progressive improvement in the quality of housing in Ontario in all aspects has Tarion achieved through research programs?
 - b. Has this progressive improvement been adequate, given this Object, changes in homebuilding technologies and practices in the past decade, the surplus funding that Tarion has accumulated, and considering consumer claims?
5. Organization design and structure & Employee compensation
- a. Tarion appears to have excessive management.
 - i. Compared to other consumer protection agencies, does Tarion have an appropriate number of Vice Presidents?



- ii. Some departments have many managers but few employees. Is this appropriate?
 - iii. Are the salaries and benefits (including any bonuses) paid to Tarion executives and managers appropriate, e.g., in line with other consumer protection agencies? The 2012 Statement of Financial Position shows almost \$6 million in "employee future benefits liabilities". What is this, and is this appropriate?
 - iv. How many Tarion employees earn more than \$100,000 annually in total compensation? What percentage of the total employee population does this represent? Who are these employees and how much do they each earn annually in total compensation?
 - b. Is it appropriate that the internal Tarion Ombudsperson reports to the Tarion CEO, e.g., should this position report directly to the board of directors?
 - c. Is the number of investigators in the Enforcement Department adequate to cover the entire province of Ontario, e.g.,
 - i. How does this relate to other consumer protection agencies?
 - ii. Enforcement efforts appear to have been drastically reduced in recent years. Why is that? Is the level of enforcement efforts adequate?
 - d. The Licence Appeal Tribunal (LAT) process is very expensive for all parties. The Builder Arbitration Forum is a cost reduction process for builders to challenge Tarion's rulings (and excludes the consumer). Other consumer protection agencies have internal committees/boards to assess consumer claims. Why has Tarion not established a Claims Review Committee/Board to simplify the process and reduce costs for everyone? Should this be established?
- 6. Codes of Conduct/Ethics and or Honesty & Integrity Codes
 - a. Is the Code published on Tarion's web-site adequate? Is it properly monitored and enforced?
 - b. How does Tarion's Honesty & Integrity process compare to other consumer protection agencies?
 - c. Why does Tarion not publish the administrative penalties builders have incurred for breaches of the regulations or breaches of the Honesty & Integrity code?
- 7. Legal fees
 - a. How much does Tarion spend on lawyers (in-house and external)? What percentage is this of Tarion's total expenses?
 - b. Of this total amount:



- i. How much is spent related to consumers, e.g., cases at the Licence Appeal Tribunal (LAT)?
 - ii. How much is spent related to builders, e.g., removal of a licence to build?
 - iii. Are these amounts appropriate, given Tarion's consumer protection mandate?
 - c. When a claim is denied and a consumer appeals to the LAT, Tarion uses mandatory fees paid by consumers to defend the builder. Given that it is the builder's warranty, should the builder not be responsible for defending it?
8. Resellers - Tarion has established a separate process to register a "reseller".
 - a. Why is that?
 - b. What is the difference between a "reseller" and a "vendor" as stated in the Act?
 - c. Does a consumer have exactly the same protection benefits from a "reseller" over a vendor with Tarion's separate process?
 - d. Is Tarion's separate process to register a "reseller" appropriate, e.g., in accordance with the Act, fair to consumers, etc.?
9. Harris-Decima annual survey of consumers
 - a. Homeowners who purchased from small builders are excluded from this survey. Is this appropriate, e.g., does this significantly distort the results, is this fair to consumers who have purchased from a small builder?
 - b. In a Letter to the Editor of the Toronto Star published July 8, 2013 (Most satisfied with Tarion's work), Tarion VP Mortfield said: *"The 85 percent approval rating Tarion received last year would suggest that Ontario homeowners have confidence in Tarion and our work on their behalf."* Using Ms. Mortfield's numbers -- including that there are 380,000 homes under warranty, the remaining 15% suggests that 57,000 purchasers of newly built homes do not have confidence in Tarion. Given that a home is the largest purchase most consumers make, is an 85 percent approval rating adequate? If not, what should be Tarion's goal in relation to an approval rating?
 - c. The winners of the annual builder awards program are determined from this survey, which includes a gala dinner event.
 - i. How much does Tarion spend on the annual builder awards program?
 - ii. Is it appropriate for Tarion to cover the costs of this program, e.g., do any other consumer protection agencies honour their licensees in such a way? If this program is to continue, should the costs of this award



program be covered by another entity, e.g., the Ontario Home Builders Association, rather than Tarion?

10. Overall financial position of Tarion

- a. When considering current dollars in securities, the amount in the guarantee fund, etc., is Tarion charging consumers an appropriate mandatory fee?

Ontarians deserve and need meaningful consumer protection on the largest purchase most of them ever make: a new home. CPBH supports this goal for Ontarians and all Canadians.

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For further information, media may e-mail: media@canadiansforproperlybuilt homes.com .

Canadians for Properly Built Homes: Backgrounder, November, 2013

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.

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,



Canadians for Properly Built Homes

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environmental medicine, industrial hygiene, insurance, law, academe, political science and business. CPBH has more than 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 address these construction defects, there are also builders who will not. In some 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 representatives have appeared on television, for instance, CTV's W-Five on multiple occasions, as well as a variety of appearances on local news broadcasts on CBC and CTV, 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"*. In 2013, key members of the Canadian heating, ventilation and air-conditioning (HVAC) industry began working with CPBH to try to make necessary improvements in HVAC across the country.

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, and relies on donations from consumers to cover its operating costs.