



## **Presentation to Standing Committee on Justice Policy regarding Bill 159 and the Tarion Warranty Corporation**

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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. CPBH earned "partner" status with the Canadian Consumer Information Gateway (Industry Canada).

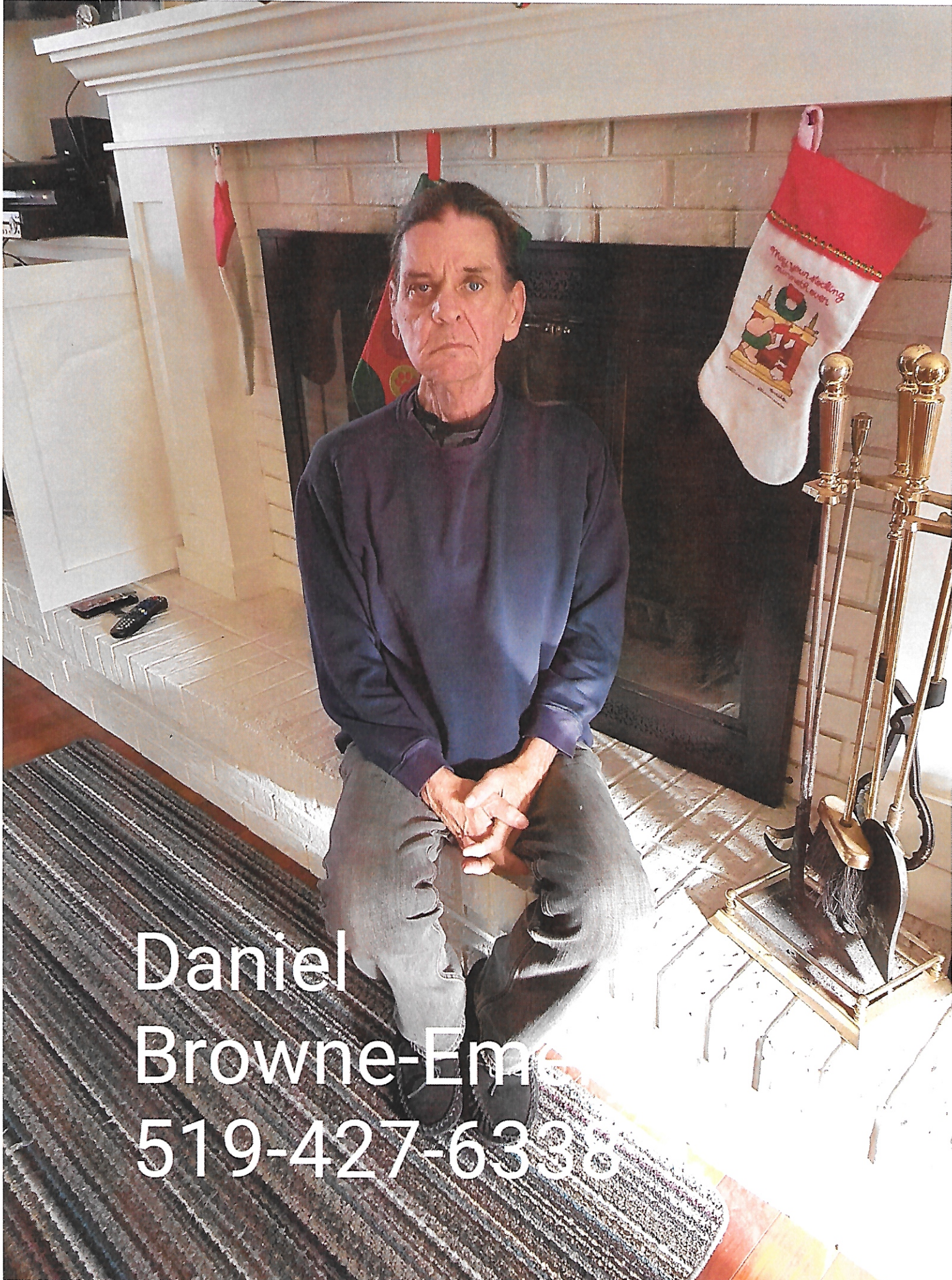
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## **Presentation to Standing Committee on Justice Policy regarding Bill 159 and the Tarion Warranty Corporation**

Thank you for the opportunity to meet with you today. My name is Karen Somerville, and I am the President of Canadians for Properly Built Homes (CPBH).

CPBH's work is focused on consumer protection for Canadians regarding the largest purchase most of us make: a home. We have communicated with thousands of consumers in our almost 16 years of operation – the vast majority of them Ontarians.

Before I get in to specific comments regarding Bill 159, I would like to tell you a little about one person who purchased a newly built home – Daniel Browne-Emery. Here is a recent photo of Daniel.

On Nov. 20, 2017 I made a presentation to the Standing Committee on Social Policy regarding Bill 166 – another Bill about Tarion - and I also spoke then about Daniel's tragedy. Recently Daniel received even more disastrous news. He is dying from throat cancer. Throat cancer that he believes came from mould in his newly built home. Here is a brief summary of his story, as he told it to us.

In 2007 Daniel bought a newly built home in Port Dover, ON from a Tarion-approved builder. Port Dover is in MPP Toby Barrett's constituency.

Daniel quickly found serious construction defects, including Ontario Building Code violations in this home.

He contacted Tarion and he understood that Tarion would help him.

He waited over three years for Tarion to help. Tarion did not help him.

His insurance was cancelled due to the construction defects and mould.

Without insurance, Daniel could not get his mortgage renewed.

Without a mortgage, his home went into foreclosure. In 2011 Daniel became homeless.

In 2017 Daniel was diagnosed with throat cancer. His oncologist asked: *"Have you ever been exposed to asbestos or mould?"* Daniel said his heart sank as he had lived in that newly built mouldy house for years as he waited for Tarion to help him.

Daniel underwent chemotherapy, radiation and a radical neck dissection. He remained hopeful. But in Nov. 2019, Daniel received tragic news: The cancer has returned. Doctors have told him that he will not survive this time.

In a Dec. 14, 2019 Facebook post, Daniel wrote: *"...I just wanted to build a home to retire in. I paid for Tarion warranty. I paid the builder in FULL!! Neither of them did what they were legally and morally bound to do. Did they pay a price for their transgressions? NO.. One could argue, I will pay, again, the ultimate price, my life."*

He has a son and a wife. On Jan. 6, 2020, Daniel finally had an opportunity to meet with Tarion's senior management after all of these years. He asked me to join him and his wife in that meeting. I was honoured to join them. Daniel continues to desperately seek compensation from Tarion.

So, what does the example of Daniel Browne-Emery have to do with Bill 159? **Everything.** It is a tragic example of the need to ensure the Ontario Building Code is enforced during construction, and when it is not, of the need to take swift action to ensure that the proper repairs are made.

**About Bill 159 specifically – we have two major concerns:**

1. It does not go nearly far enough to provide adequate consumer protection, and
2. It is taking far too long to address the serious issues with Tarion.

In Dec. 2016 Justice Cunningham delivered his Tarion Review report to the Ontario Government, which in effect concluded that Tarion needs to be dismantled with a multi-provider competitive model introduced. Here we are in 2020 and consumers have seen no real change in consumer protection since Justice Cunningham tabled his report.

Research shows that competition is a critical driver of performance and innovation. Research also shows that competition encourages lower prices, better products and better service.

I am aware that this committee heard some examples this week of the PC Party's criticisms of the Liberal's Bill 166 related to Tarion in 2017, e.g., related to independent dispute resolution.

CPBH asked all political parties before the last election what they would do if elected. Former PC MGCS Critic MPP McDonnell responded on behalf of Interim Leader Fedeli. Here is an excerpt of his response:

*"...We are on the record advocating for more flexibility in the new home warranty market and for greater independence of the dispute adjudication process, and we remain strongly in favour of legislation that would make these changes possible. Our amendments struck a balance by not abolishing the "public" warranty provider outright, but allowing the government to prescribe acceptable alternative plans from licensed insurers..."*

- MPP Jim McDonnell email dated Feb. 15, 2018 on behalf of Interim Leader MPP Fedeli, to Karen Somerville, President, CPBH



“Government should not have a monopoly on any business. I can’t stand it when politicians think they can run things better than hard working Ontarians”.

- Doug Ford, Twitter, Feb. 15, 2018

“I’ve always been open to a fair market. I let the market dictate. I don’t like the government controlling anything”.

- Doug Ford, CBC, March 13, 2018

“We can’t continue throwing money at the problem (broken systems) as our predecessors did, into top-down, big government schemes.”

- Premier Doug Ford, 2019 Association of Ontario Municipalities Conference

Why did the PC Gov’t not incorporate into Bill 159 what the PCs criticized in 2017 with the Liberals’ Bill 166? Why did the PC Gov’t not incorporate into Bill 159 what the PCs committed to before the 2018 election?

We don’t understand why Minister Thompson decided against a competitive model. We also don’t understand why Minister Thompson has not provided for independence of the dispute adjudication process. We are disappointed that Minister Thompson has not responded to our requests to meet with us since she became minister. We are also disappointed that Minister Thompson has not responded to our requests to provide the information that she used to base her decision to continue with the mandatory monopoly model. There must be transparency.

Minister Thompson and her predecessor, Minister Walker, have both referred to Tarion as “broken”. Many have concluded that Tarion is beyond repair, and CPBH agrees with that conclusion.

Bill 159 is an attempt to fix some aspects of Tarion. On a scale of 1 – 10, we give Bill 159 a 2. In a nutshell, it is not sufficiently focused on strong consumer protection.

If you will not revise Bill 159 to introduce a competitive warranty model, we propose the following amendments:

1. Clearly state at the outset that this is consumer protection legislation and the main objective of it is to deliver strong new home warranty protection for new home buyers. (Justice Cunningham identified this in his Tarion Review report.) Then remove references to “public interest” and replace that with consumer protection, e.g., in the section Administrative Agreement 2.0.1 it says “promoting the protection of the public interest, and consumers in particular”.



2. Require overarching emphasis throughout Bill 159 on quality homes and strong consumer protection, as Justice Cunningham did.
3. Prohibit builders and their representatives from sitting on the Tarion board as this is a conflict of interest. A Builder Advisory Council could be established to receive builder input.
4. Require coverage for two years on labour and materials, five years for building envelope, including defects resulting in water penetration, and ten years on the physical structure, like they have in BC.
5. Require an increased maximum payout from Tarion. We are aware of a number of situations where the \$300,000 current maximum was insufficient.
6. Require a Builder Directory and identify minimum information that needs to be made available to the public, including all chargeable conciliations, with Code violations specifically highlighted – no exceptions, no loopholes.
7. Provide non-binding adjudication of unresolved warranty disputes via an organization that is separate from Tarion and the regulator. (This was also recommended by Justice Cunningham in his Tarion Review.)
8. Require Tarion to conduct research to achieve progressive improvement in housing quality. (This requirement is in the 1976 Letters Patent for Ontario's new home warranty.)

Please proceed with urgency to pass the legislation and related regulations. It's important to note that an estimated 100,000 families have been forced - by law - to purchase Tarion's "broken warranty" since this government came into power.

As you move forward with your work concerning Bill 159, please remember that many families are suffering today due to the lack of adequate consumer protection for their newly built home, e.g., freezing in homes that do not meet the minimal Ontario Building Code, financial burden, physical illness, mental illness, stress, anxiety and trauma. Some have told us that they have considered suicide. Tragically, Dr. Earl Shuman did commit suicide over these issues (as reported in the Toronto Star Feb. 20, 2019).

As you move forward with your work concerning Bill 159, please remember Daniel Browne-Emery and Earl Shuman. I have many other homeowners that I could tell you about if I had more time. Thank you.



Enclosures:

1. Photograph of Daniel Browne-Emery
2. Justice Cunningham's jurisdictional scan of other warranty programs – refer to BC's 2-5-10 warranty periods
3. MPP McDonnell's (former PC Critic for MGCS) Feb. 15, 2018 full email

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**Subject:** RE: Election 2018: Request for information regarding where the PC Party of Ontario stands on three key issues  
**From:** "McDonell-co, Jim" <jim.mcdonellco@pc.ola.org>  
**Date:** 2018-02-15, 4:37 p.m.  
**To:** "'CPBH'" <info@canadiansforproperlybuilt homes.com>

Karen,

Thank you for e-mailing MPPs Clark, Fedeli and myself regarding the ongoing troubles with access to information pertaining to the crafting of the TARION reform legislation and those issues at TARION that persist despite recent changes. I want to thank you, first and foremost, for your passionate and dedicated advocacy on behalf of consumers.

The Ontario PC party committed to the principle of trust, accountability and integrity in government on numerous occasions. Our position and commitment to ensuring Ontarians can be confident in their government's focus on the public interest remain unwavering.

The subject of your access to information request is still pending an eventual appeal before the Information and Privacy Commissioner, an independent officer of the Legislature. Due to this, I shall focus my response on the nature of the process that led to this.

The public must be able to trust that the government acting in their name is well informed and properly advised. To that end, numerous laws exist to ensure that communications between the government and civil servants, special interest groups and citizens are subject to scrutiny with limited restrictions. Under this government, we have seen the opposite: minimal scrutiny with maximum restrictions.

The recommendations of the Cunningham review were delivered independently and were based on advice and feedback received through public consultations and private correspondence, the latter being important to preserve the integrity of ongoing or future legal proceedings. In the focus group convened by the government, participants appeared to be expected to take direction from individuals with clear and obvious interest in influencing the letter and spirit of the new legislation. The presence of interested stakeholders is not negative per se: new home owners, builders and other parties have direct experience of the industry and processes that they wish to see reformed, and this knowledge should be welcomed.

The problem with the government's approach is the obsessive secrecy surrounding the working group, its meetings, its dynamics and its recommendations. A member of the public has therefore no way of ascertaining what advice was received, when, from whom and by whom, and how that advice was translated into crafting instructions to Ministry counsel. With increased transparency, instances of the government scrambling to amend its own legislation due to unintended errors in the coding process could be averted through ongoing stakeholder and public feedback.

Taken at face value, the TARION reform legislation lacked most of Justice Cunningham's recommended consumer protection safeguards, including independent assessment and dispute resolution and a competitive model. The Ontario PC Caucus moved amendments to that effect, and supported the NDP's amendment to institute Auditor-General oversight over the existing TARION structure. We are on the record advocating for more flexibility in the new home warranty market and for greater independence of the dispute adjudication process, and we remain strongly in favour of legislation that would make these changes possible. Our amendments struck a balance by not abolishing the "public" warranty provider outright, but allowing the government to prescribe acceptable alternative plans from licensed insurers.

Independent dispute resolution is also a key component of limiting the number of instances where an appeal to the LAT is necessary. Clients' resources are stretched thin due to the need to hire their own experts and legal counsel to dispute the warranty provider's assessment. This adds an unnecessary layer of costs and delays to a process that should be objectively simpler: either a defect is there or it isn't. You also correctly point out that lack of an enforcement mechanism for LAT decisions makes the system inefficient even when consumers do win. Enforcing the Ontario Building Code is a municipal responsibility and one that municipalities should be given the tools and funding to carry out. The ongoing cuts to municipal funding programs such as OMPF make it increasingly difficult for municipalities to provide the level of public services and enforcement that would guarantee the Building Code was being followed in every new build. Moreover, new builds are not the only ones affected by Building Code violations. Constituents have come to me highlighting how renovation and other work done in properties in violation of certain Building Code norms is affecting their ability to live in the home and forcing them to consider having the property condemned. Clearly, we can do more with municipalities to ensure home buyers and owners aren't left without any recourse but the courts.

I look forward to continuing to work with my caucus colleagues and you in addressing the many reforms Ontario home buyers deserve to see realized.

Regards,

Jim McDonell  
Member of Provincial Parliament  
Stormont-Dundas-South Glengarry  
613-933-6513





## Supplemental Presentation to Standing Committee on Justice Policy regarding Bill 159 and the Tarion Warranty Corporation

Thank you for the opportunity to meet with you today, and for the good questions.

I am pleased to submit additional information based on comments/questions I received from Committee members, that I did not have sufficient time to address. As well, I would like to provide additional information related to some other presentations that took place today.

1. **Serious problems with Tarion's organizational culture** – A number of the presenters said it is not possible to change Tarion's culture. In my professional life, I do considerable work related to organizational culture, and the difficulties in changing an organization's culture. My PhD dissertation related to changing an organization's culture. I do research and consulting in this area, and I am also a university professor who teaches this subject. It is important to note that research shows that about 70% of change initiatives fail, and organizational culture change initiatives have an even higher failure rate.

In CPBH's response to the Auditor General's report on Tarion, we commented about the Auditor General's lack of focus on Tarion's culture in her report (#2). Here is a link with our response to the Auditor General's report. <https://tinyurl.com/y37xtsuk>

CPBH's response to the Auditor General's report on Tarion concluded by saying:

*"...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."*

After her report was made public, CBC Ottawa Morning conducted a radio interview with Auditor General Lysyk. CBC raised CPBH's criticisms of her report, and asked the Auditor General to respond. In her response, Ms. Lysyk said that CPBH has valid concerns.

2. **Perception that moving to a multi-provider model would mean that the Ontario Government would lose oversight of the warranty companies** – MPP Ghamari made comments something to this effect. This does not have to be the case that government oversight would be lost – it depends upon how the legislation is written. For example, CPBH participated in Manitoba's new

legislation consultations a few years ago to introduce a multi-provider warranty. The way that Manitoba planned to approach this was as follows:

The Government of Manitoba would :

- a. set minimum standards that warranty providers would need to provide in order to be approved as warranty providers;
- b. approve the warranty providers for Manitoba;
- c. monitor performance of warranty providers,; and
- d. discontinue warranty providers that were not meeting minimum standards.

3. **Information requested about British Columbia, where there is a successful multi-provider model operating:**

- a. BC is often referred to as the “gold standard” in Canada from a new home warranty perspective.
- b. I provided Justice Cunningham’s Jurisdictional Scan as a handout in my initial submission today. British Columbia is included.
- c. I mentioned today that MGCS had invited a BC expert to their consultations re Tarion in 2019. It is important to note that MGCS staff has already heard directly from a BC expert. His name is Mr. Tony Gioventu, Executive Director, Condominium Home Owners’ Association of BC (CHOA). In that 2019 MGCS consultation, Mr. Gioventu spoke positively about the multi-provider model in in BC. The following is a statement that CPBH received directly from Mr. Gioventu:

*“...The multiple party insurance model that is applied in British Columbia for new home warranty was introduced in 1999 in response to the failure of the New Home Warranty Program. The warranty applies to both new built construction and market multi family buildings undergoing building envelope rehabilitation. The system requires each developer to enroll with a warranty provider prior to obtaining a building permit for the project or development. The success of the system is due to the warranty providers who are private insurance providers who act competitively and manage their own risk independently through site inspections, peer reviews and financial assessments.*

*The mandatory mediation process as part of the Homeowner Protection Act in BC compels the parties to solutions where there are disagreements over warranty claims.”*

- Tony Gioventu, Executive Director, Condominium Home Owners’ Association of BC (CHOA), Mar. 12, 2019

- d. **Perception that consumers will have no choice if the multi-provider warranty model is adopted.** Again this was raised by MPP Ghamari, who suggested that consumers will have no choice as it is the builder who would choose the warranty provider.



Consumers in fact do have some choice, as they choose the builder. The warranty company selected by the builder should be part of the homeowner's purchase criteria and considerations, along with the model of the home, the neighbourhood, etc.

I hope you find this additional information helpful.

Thank you again.

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