



## **A Brief Report Related to the Licence Appeal Tribunal (LAT) and Tarion 2006 - 2021**

### **Submitted to:**

**Premier D. Ford  
Minister D. Downey  
Minister R. Romano  
MPP M. Schreiner**

**NDP Leader A. Horwath  
NDP Critic G. Singh  
NDP Critic T. Kernaghan  
Auditor General of ON B. Lysyk  
Tribunal Ontario Chair, Sean Weir**

**Liberal Leader S. Del Duca  
Liberal Critic L. Collard  
Liberal Critic S. Blais  
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**Issued Mar. 25, 2022**

### ***“The LAT: The Place that Fairness Forgot”***

Please submit response, 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).

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Prepared by  Canadians for Properly Built Homes

Report related to the LAT Decisions and the *Ontario New Home Warranties Plan Act*  
Overview Analysis of the period 2006-2021

## Overview re Homeowners' Success at the LAT 2006 to 2021 re Tarion

Yet again, the vast majority of Ontario's new home purchasers refused to go to the Licence Appeal Tribunal (LAT) to fight Tarion's decisions. For those who did, it was another frustrating experience. Only three decisions were issued in 2021, and those three decisions involved eight items. One of the eight appeals was successful - an 12.5% homeowner success rate in 2021; or an 87.5% homeowner failure rate.

The one item that was successful at the LAT in 2021 concerned an illegal substitution. It is deeply concerning that these homeowners had their illegal substitution claim rejected by Tarion, and that they had to proceed all of the way through the LAT process, after fighting with Tarion, to get this resolved. CPBH has written to the Tarion CEO, Mr. Balasubramanian, about this and asked how this could have happened, who made the related decisions to reject the illegal substitution claim, and whether those Tarion employees faced any negative consequences for these erroneous decisions.

It is also important to note that to date, homeowner wins at the LAT are still not reflected in the Ontario Builder Directory. This is wrong – it's time for that to change.

Again in 2021, none of these homeowners were represented by a lawyer at the LAT – they were all self-represented. Tarion is **always** represented by lawyers/paralegals. This is another indicator of an uneven playing field for consumers.

Ontario's purchasers of newly built homes **have lost 84%** of the items appealed at the LAT in relation to Tarion's decisions from 2006 to 2021.

Think about that – an 84% failure rate for homeowners since CPBH started to track this data in 2006.

## So why do so few homeowners go to the LAT to appeal Tarion decisions?

Serious problems with the LAT's processes have been known for many years now. For example:

*"...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..."*

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

There are also concerns with how some LAT adjudicators treat self-represented litigants at the LAT. Others believe that the LAT adjudicators simply don't understand home construction sufficiently to be adjudicating these cases, given the complexity of new home construction.

Over the years CPBH volunteers have met with key people at the LAT about these issues. Although significant process problems and insufficient training for adjudicators have been acknowledged by the LAT, we have seen no meaningful improvements for homeowners.

As well, the LAT relies on Tarion's construction performance guidelines in reaching its decisions about construction performance. Many homeowners take issue with Tarion's construction performance guidelines. For example, a recent tweet on Twitter from @frankpressus said:

*"Tarion construction performance guidelines are here to legitimize the sub-standard & unprofessional & poor workmanship of new home builders..."*

CPBH recently wrote to the Executive Chair of Tribunals Ontario, Sean Weir, and asked the following questions: Has the LAT ever had the Tarion Construction Performance Guidelines independently assessed for appropriateness, given that the LAT relies on these guidelines? If yes, by whom, and when, and may we have a copy of that assessment?

Further, the LAT has no authority to enforce its decisions. There have also been situations in which the homeowners did win at the LAT, and then the builders refused to follow the LAT orders.

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 (and in some cases, have not responded at all) when CPBH has written to them annually for assistance/investigations/audits since 2007. Many who know about this situation continue to ask:

***Why do these oversight bodies continue to turn a blind eye as the number of decisions have plummeted and confidence in the LAT has deteriorated to this level – and as homeowners lose 84% of the time related to the largest purchase most make – a home?***

## What happens when people refuse to go to the LAT to try to resolve disputes with Tarion and/or lose at the LAT?

As we have said before, there are a number of possibilities, for example,

- Homeowners 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.
- Homeowners fix the construction defects/Ontario Building Code violations themselves, and pay for them out of their own pockets.
- Homeowners “patch and run” – i.e., selling the home to the next unsuspecting homeowner without disclosing the construction defects/Code violations.
- Homeowners pursue their issues in regular courts.

*“The LAT is useless. I pulled out of that and went the court system finally to a positive outcome.”*

- Homeowner Mark Shulman, Facebook

### CPBH’s position remains:

- 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.