



A Brief Report Related to the Licence Appeal Tribunal (LAT) and Tarion 2006 - 2022

Submitted to:

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| Premier D. Ford | NDP Leader M. Stiles | Int. Liberal Leader J. Fraser |
| Minister D. Downey | NDP Critic K. Wong-Tam | Liberal Critic L. Collard |
| Minister K. Rasheed | NDP Critic T. Rakocevic | Liberal Critic S. Blais |
| MPP M. Schreiner | NDP Critic J. Bell | Ombudsman of ON P. Dube |
| Tribunals ON Chair, S. Weir | Auditor General of ON B. Lysyk | |

Issued June 5, 2023

"The LAT: The Place that Fairness Forgot"

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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Overview of Homeowners' Success at the LAT re Tarion in 2022

2022 was another year when the vast majority of Ontario's new home purchasers refused to go to the Licence Appeal Tribunal (LAT) to fight Tarion's decisions. There were only three decisions in 2022, involving only five items. Sadly, homeowners lost all five items; there was a 100% homeowner failure rate.

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It is important to note that related to these three decisions in 2022, two thirds of the homeowners had legal representation, i.e.,:

- for one decision, a lawyer represented the appellant,
- for one decision, a paralegal represented the appellant, and
- for one decision, the appellant was self-represented.

As well, in 2022, two thirds of the homeowners had technical support at the hearing, i.e.,:

- for one decision, the appellant had two engineers testify,
- for one decision, the appellants had a roofer testify, and
- for one decision, the appellant did not have any technical support.

Yet, despite the majority of the cases having legal and/or technical support, none of the homeowners were successful with any items included in their appeals. (In previous years, often homeowners did not have legal representation or technical support.)

Tarion is **always** represented by a lawyer/paralegal and often will have technical support.

Overview re Homeowners' Success at the LAT re Tarion - 2006 to 2022

It is interesting to compare 2022 to the first year that CPBH did this analysis in 2006.

- In 2006, there were 208 items appealed, and 33 were won by homeowners – a 15.8% win rate.
- But in 2022, there were only five items appealed - a 0% win rate. The vast majority of Ontarians will no longer go to the LAT to fight Tarion's decisions.

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 2022.

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.

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There are also concerns with how some LAT adjudicators treat self-represented litigants at the LAT. Others believe that the LAT adjudicators simply do not understand home construction sufficiently to be deciding 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.

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

There have also been concerns about the LAT relying 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, here's a tweet from Twitter sent by @frankpressus said:

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

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.

What's new in 2022? After much effort on the part of CPBH, Tribunals Ontario finally confirmed that the LAT has never had Tarion's construction performance guidelines independently assessed for appropriateness. How can the LAT be relying on Tarion's construction performance guidelines without ensuring that they are appropriate? Why isn't the LAT independent?

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 most 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 else is new in 2022? In July 2022, Critics MPP Jessica Bell and MPP Tom Rakocevic of the Ontario NDP sent a letter to the Attorney General of Ontario, Douglas Downey, requesting an audit of the LAT.

Prepared by  Canadians for Properly Built Homes

Report related to the LAT Decisions and the *Ontario New Home Warranties Plan Act*
Summary Analysis of the period 2006-2022 and Related Commentary

(Refer to Appendix 1 of this report for a copy of their letter that was hand-delivered to the Attorney General in July 2022.) CPBH recently learned that MPP Bell and MPP Rakocevic have not yet received a response from Attorney General Downey.

CPBH is very appreciative of the request for this audit. It is very disappointing to hear that Attorney General Downey hasn't bothered to respond in 10 months.

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

As CPBH has said many times 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, some homeowners have been freezing in their homes in winters for more than a decade due to HVAC Code violations. It is important to note that Code violations put the health and safety of the occupants at risk.
- Homeowners fix the construction defects/Ontario Building Code violations themselves, and pay for 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.

CPBH's recommendations:

- 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 appropriate 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;
 - o An independent review of whether Tarion's construction performance guidelines are appropriate to be used in adjudications, and if it is determined that they are not, another means of assessment that is fair and appropriate; and
 - o A substantial public relations campaign to help restore faith in Ontario's legal system.

Appendix 1



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Official Opposition · l'Opposition officielle

Ontario NDP Caucus · Groupe parlementaire du NPD de l'Ontario

The Honourable Doug Downey
Ministry of the Attorney General
11th Floor, 720 Bay St.
Toronto, ON, M7A 2S9

July 15, 2022

Dear Minister Doug Downey,

I'm writing to ask you to conduct an audit into the fairness of the rulings issued by the Licence Appeal Tribunal. Let us tell you why.

Over 80,000 homes are built in Ontario each year. Purchasing a new home is most Ontarians biggest expense. Homeowners need certainty that their new home is properly constructed.

When a home isn't properly constructed, a homeowner can make a claim to the warranty provider, TARION, to seek compensation and repairs. If that claim fails - and it often does - the homeowner can go to the provincial Licence Appeal Tribunal (LAT) to have their case heard and decided upon by an impartial adjudicator.

But is the LAT a fair and effective body? Advocacy organization, Canadians for Properly Built Homes (CPBH) reviewed all the decisions made by the LAT since 2006, and calculated that home owners lose at the LAT approximately 85% of the time. CPBH suggests there are many reasons for this rate loss, including the LAT's decision to use TARION's construction performance guidelines without independently assessing their value. Even if a home owner has a successful appeal outcome, the LAT does not effectively enforce the decision.

It is the Ontario government's responsibility to ensure homes are built to a good standard. That requires:

- strengthening the building code so new homes are more energy efficient, accessible and durable,
- a proper inspection and enforcement system to ensure builders build home to code,
- a fair and stringent multi-provider warranty system so consumers have choice, and
- a fair dispute resolution and arbitration tribunal process when things go awry.

When any one of these steps fall short, home owners are at risk of buying a poorly constructed and defective home.

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That is why I am calling on your Ministry to audit the Licence Appeal Tribunal to ensure its decisions are fair to home owners and warranty providers alike. I would like to request a meeting to discuss these issues further. I look forward to your response.

Yours,

Jessica Bell,
MPP for University Rosedale

Tom Rakovich,
MPP for Humber River Black Creek

CC:
Minister of Municipal Affairs and Housing, Steve Clark
Karen Somerville, President, Canadians for Properly Built Homes

Ontario NDP Caucus Services

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