

Appendix C – Jurisdictional scan

The following key findings and innovative practices were identified in my review of 9 jurisdictions providing new home warranties.

British Columbia

British Columbia has had a mandatory, multiple provider warranty system under the *Homeowner Protection Act* since 1999. There are currently five insurance providers offering warranty coverage. This model was a result of problems experienced in the 1980s and 1990s. A large numbers of condos were built with faulty foundations and the program in place at that time, declared bankruptcy despite having assets of about \$22 million, as that amount was insufficient to respond to the claims that totaled in the hundreds of millions. ^[1]

Under the current model the Home Protection Office (HPO) is a branch of BC Housing, a provincial Crown agency under the Ministry of Natural Gas Development. It is responsible for licensing residential builders and building envelop renovators, ensuring homes are covered by home warranty insurance, monitoring the provision of third-party home warranty insurance, and conducting research and education to benefit the industry and consumers. The HPO requires that all residential builders be licensed by it and have arranged for third-party home warranty coverage for proposed new homes prior to obtaining a building permit. ^[2]

BC's warranty system provides coverage for two years on labour and materials (with some limitations), five years for building envelope, including defects resulting in water penetration, and ten years on the physical structure. There are exemptions for homes built by owner builder, manufactured homes, non-stratified hotels, multi-unit rental buildings, and social housing. The limit of claims coverage is the lesser of \$200,000 (single dwelling) or \$100,000 (strata homes) and the first owner's purchase price. For common strata property, the limit is up to \$2.5 million per building. ^[3]

Homeowners can enter into a non-binding mediation, performed independently of the HPO, with the warranty provider if they do not feel that a dispute will be resolved through informal negotiations in a reasonable time. Both parties must jointly agree to an acceptable mediator, failing which one is appointed by a body designated by the Attorney General to select mediators. If a resolution cannot be reached through mediation the dispute must then be resolved some other way, usually through the courts. The owner can choose to forgo the mediation process altogether and move directly to some other form of resolution. ^[4]

Government oversight of the HPO is provided by both the provincial Auditor General and provincial Ombudsperson. Regulations are made by either the Lieutenant Governor in Council or the Minister. ^[5] The HPO has a dedicated research department

which provides consumers and builders with various information resources.^[8] The HPO also publically discloses on its website a record of suspensions or cancellation of a builder's licence, the facts relating to a monetary penalty or compliance order, and the name of each person convicted of an offence under the Act.^[7]

Alberta

As of February 1, 2014, Alberta employs a mandatory, multiple provider warranty system under the *New Home Buyer Protection Act (NHBPA)*. The new legislation requires that all home builders (except for owner builders) purchase a warranty before being eligible for a building permit.^[9] The warranty can be administered by one of seven different warranty providers in Alberta. The new legislation also introduced the New Home Buyer Protection Office (NHBPO) division of Public Safety Division of Municipal Affairs, responsible for the administration of the NHBPA including promoting compliance with the legislation, enforcing the Act and its regulations through compliance orders, administrative penalties, and convictions through the courts.^[9]

Under the NHBPA, new homes include, at minimum, a warranty for one year labour and materials protection, two year distribution systems protection, five year building envelope protection, and 10 year structural protection. Additionally, the warranty provider must offer the homeowner an option to purchase additional coverage for defects in the building envelope and other components of the new home.^[10]

The dispute resolution process is outlined within the *Insurance Act* instead of the NHBPA, which is independent of the NHBPA. The *Insurance Act* requires the homeowner to submit a written request and proof of loss to the warranty provider. Then, the homeowner and the warranty provider each appoint someone who is not their employee to represent their interests. If the two representatives can't agree on a solution, they will appoint someone to act as an umpire. If the two representatives can't agree on an umpire they can apply to the Superintendent of Insurance to select an umpire. The umpire will issue a written decision based on a review of the facts provided by the representatives.^[11]

The >NHBPO provides consumers with various information resources, however, it doesn't disclose the outcomes of warranty claims. The Minister appoints members to the New Home Buyer Protection Board, which hears appeals of certain decisions made by the NHBPO including owner builder authorization, exemption from warranty coverage for undue hardship, compliance orders, administrative penalties, and anything else assigned by the regulations made under the Act. There are currently 35 board members of which fewer than 50% are directly tied to the industry.^[12]

Saskatchewan

The New Home Warranty Program of Saskatchewan, Inc. (NHWP SK) was formed in 1976 by the building industry, to provide a new home builder's warranty in order to improve consumer confidence in builders. It is incorporated as a private non-profit corporation and is governed by a Board of Directors. The NHWP SK 's operations are paid for through membership fees and a fee charged to enroll each house. ^[13]

Under the NHWP SK, the warranty coverage provided includes \$50,000 deposit protection, one year coverage against defects in workmanship and materials, two years coverage against water leaks, and five year coverage against major structural defects. Additionally, an optional 5-year Extended Major Structural Defect Warranty is available for eligible single family houses, which protects against major structural defects from the sixth to the tenth year. ^[14]

The homeowner is requested to write to the registered builder regarding the issues they are experiencing, and the NHWP SK will get involved if the builder does not respond or the homeowner requires assistance to resolve the warranty issue. The NHWP SK will give the builder a deadline to resolve the issue which is determined on a case by case basis. If the time elapses and the issue is not resolved, the homeowner can proceed to conciliation. The NHWP SK will hire an independent conciliator who is an expert in residential construction to investigate the dispute. Once the investigation is completed, the conciliator will provide a written decision that is binding on both parties. The decision includes detail of the conciliator's findings and outlines responsibility for warranty repairs. ^[15]

Given the NHWP SK is a private non-profit corporation there is no government oversight. The NHWP SK offers various resources from which consumers can obtain information. It does not disclose details pertaining to new home warranty claims. The NHWP SK is governed by a Board of Directors composed of six builder and five non-builder members including a member of the lending community and a consumer representative. ^[16]

Manitoba

New home warranty legislation scheduled to come into force January 1, 2017, will move Manitoba from a voluntary system to a mandatory, multi-provider warranty system. The *New Home Warranty Act (NHWA)* will be administered and enforced by the Consumer Protection Office (CPO). The NHWA will increase consumer protection by ensuring all new homes are covered by a consistent minimum standard of warranty protection. ^[17] Manitoba elected to adopt a multi-provider model instead of a single legislated warranty provider model like Ontario because the new home market is not large enough for a single warranty provider to accumulate sufficient capital reserves to self-fund a province-wide home warranty program. By way of comparison, since 1990 Ontario has averaged 26 times the number of annual housing starts as Manitoba.

The CPO will be responsible for the administration of the NHWA including promoting compliance with the legislation, enforcing the Act and its regulations through compliance orders, administrative penalties, and prosecutions through the courts.

Builders and warranty providers must be registered under the NHWA and only registered builders can build homes for resale. ^[18]

In Manitoba, warranties are provided by one of five authorized third-party warranty providers. Warranty coverage will include one year coverage for defects in materials, labour and design, two year coverage for violations of the Manitoba Building Code, and seven year coverage for major structural components up to a maximum of \$100 000 per unit. ^[19] Warranty coverage is also provided for 15 months and up to \$2.5 million for common elements in a condominium or building with two or more self-contained dwellings. ^[20]

In the case of a dispute over coverage, the homeowner can request the warranty provider to participate in mediation and both parties must jointly agree to an acceptable mediator within a reasonable time after the owner's written request for mediation, otherwise the registrar appoints one from a list maintained and published by the Minister. The homeowner can require the warranty provider to participate in arbitration by providing written notice to the warranty provider if the homeowner has participated in at least one mediation session. The arbitrator is selected by both the parties or by the court if they cannot agree on one. The decision of the arbitrator is final. The parties can agree to move directly to arbitration. ^[21]

The Registrar will publish the New Home Registry in Manitoba, which will provide homeowners with information on registered builders and the status of warranty coverage on newly built homes. It will also list the builders that have been subject to administrative penalties, and compliance orders or who have been convicted of an offence under the Act. ^[22] The NHWA does not require the registrar to disclose the details of warranty claims or outcomes although it does require the warranty providers to provide this information to the registrar on an annual basis. ^[23]

The NHWA provides that a home warranty is deemed to be a contract between the warranty provider and whoever is the owner of the new home from time to time, the owner is deemed to have given good consideration for the home warranty, and the owner is entitled to recover damages for a breach of the home warranty. ^[24]

The NHWA and regulation allow for certain exclusions from coverage, indicating the possibility of coverage above the minimum standard. ^[25]

Quebec

Since 1999, builder contractors in Quebec have been required by law to provide home buyer warranty coverage (referred to as a guarantee plan) under the Guarantee Plan for New Residential Buildings (*Building Act*). The Régie du bâtiment du Québec (RBQ) is

responsible for the *Building Act*. The mandatory guarantee program was recently revised and with new provisions in place January 1, 2015. Before this date, the administration of the guarantee plan was assigned to three independent organizations, which provided the “Abitat” guarantee. Since January 1, 2015, a single non-profit entity, the Garantie de Construction Résidentielle (GCR) is responsible for providing the guarantee plan. Guarantees provided under the old system remain valid. ^[26]

Quebec’s *Building Act* provides \$50,000 deposit protection, \$6,000 coverage for furniture storage and accommodation expenses should the closing of the home be delayed, one year coverage for faulty work and defects, three year coverage for hidden defects, and five year coverage for defects in the design, construction, and workmanship, as well as soil defects. The maximum coverage for all faulty work and defects is \$300,000 for a single-family home, \$200,000 per unit of a multiple-family building (up to a maximum of \$1,000,000 for the whole building) or \$200,000 per condominium unit (up to a maximum of \$3,000,000 for the whole building). ^[27]

Quebec’s new home warranty dispute resolution process begins with the homeowner submitting a claim to the builder, at which point the builder has up to 15 days to resolve the homeowner’s issues. If after 15 days, the homeowner is not satisfied with the builder’s response or if the builder fails to intervene, the homeowner must notify the GCR about the specific claim. A refundable fee of \$100 is charged to open a file, repayable if a decision is favourable to the homeowner. The GCR will then have 15 days to get the builder to intervene, however, if the GCR is unsuccessful in doing so, they will conduct an inspection on the premises. After the inspection has been conducted, within 30 days the GCR will develop a detailed written report stating whether or not the matter has been settled and send a copy by registered mail to the parties involved. Once this report has been issued, if the contractor fails to reimburse the homeowner or complete the required work, the GCR will work with the homeowner to reimburse the incurred expenses and/or arrange for the required work to be completed. If the homeowner or builder is dissatisfied with the GCR’s decision, they can submit the dispute to arbitration within 30 days of receiving the GCR’s written report. The arbitrator’s decision is final and is not subject to appeal. Alternatively, the parties can choose to first submit the dispute to mediation, with a mediator chosen from a list established by the Minister of Labour and the time for submitting to arbitration is extended accordingly. ^[28]

Building contractor licensing is administered by the RBQ, however, contractors who hold a general contractor’s licence for new residential buildings must be accredited under the mandatory plan and obtain a certificate of accreditation from the GCR. The GCR has implemented an inspection program (validated by the RBQ). Contractors will be rated taking into account the results of previous inspections, the number of claims, satisfaction surveys, etc. Depending on the rating, the inspection frequency will be inversely proportional. ^{[29] [30]}

The RBQ has a 13 member board, appointed by government, and representing a variety of interests including financial, construction and consumer interests. ^[31]

The GCR provides various resources for consumers and also posts arbitration decisions made under the *Building Act* on its website, which provides consumers with examples of how a variety of warranty claims are assessed under the *Building Act*. ^[32] The composition of the 13 member board is provided for in regulation under the *Building Act*, with six members appointed by members of the organizations representing various stakeholders and seven appointed by the RBQ. ^[33]

Atlantic

Voluntary new home warranties in Atlantic Canada are provided by two main organizations: the Atlantic Home Warranty Program (AHWP) and Lux Residential Warranty (LRW). AHWP is a non-profit home warranty provider and a Canadian Home Warranty Council Member (CHWC) that has over 800 members in Atlantic Canada while LRW is an insurance company that specializes in coverage for new homes. This summary focuses on the AHWP as it is the larger organization and a CHWC member. The AHWP registers member builders and its operations are paid for through membership fees and a fee charged to enroll each home. ^[34]

During the first year, the builder's warranty period is in effect which covers defects in materials and labour. From the second year until the warranty expires (which can be seven to ten years), AHWP provides homeowners with coverage against major structural defects. Deposit protection is optional. ^[35]

If the homeowner identifies a defect during the first year and cannot resolve the issue with the builder, the homeowner must send both the builder and AHWP a registered letter outlining the issues prior to the end of the first year of warranty coverage. The AHWP will respond to the letter by sending the homeowner a Request for Conciliation form, which the homeowner must complete and send back to AHWP. This form must be received by AHWP within 60 days after the one year anniversary of the date of possession. Upon receipt of the form, an AHWP representative will meet with both the homeowner and builder as soon as conveniently possible to inspect the complaint. Following the conciliation inspection, a conciliation award will be sent to the homeowner and builder outlining the complaint items, the observation of the complaint items along with the decision. The decision of the conciliator will include, if applicable, any necessary work to be carried out to meet the requirements of the Builder Warranty. All conciliator decisions are final and binding upon the builder and homeowner. From the second year until the warranty expires, homeowners can file a claim with AHWP staff before the expiration of the warranty, who will visit the home to conduct an inspection. If it is apparent that a major structural defect has occurred, AHWP will make arrangements for repairs up to \$50,000. If the AHWP determines that a major structural defect has not occurred and the homeowner disagrees, the homeowner can hire an Independent Structural Engineer

who will review the claim and AHWP 's decision. Unless the AHWP 's decision is overturned by the engineer, the homeowner is responsible for costs of engaging the engineer. ^[36]

There is no government oversight of the operations of the AHWP since the AHWP is a private non-profit corporation. ^[37] The AHWP offers various resources from which consumers can obtain information f, however, it doesn't disclose details pertaining to new home warranty claims. ^[38] The AHWP does not publically disclose the membership of its Board of Directors or advisory committees.

New Jersey

New Jersey has a mandatory, multi-provider warranty system under the New Home Warranty and Builders' Registration Act (DCA) and warrant all new homes sold to or built for consumers. Builders can register for a State Plan or Private Plan from a list of approved private warranty plans. Any builder not participating in an approved Private Plan is automatically enrolled in the State Plan. The Act established the State of New Jersey New Home Warranty Security Fund (NHSF) to guarantee builder warranties. All new home builders must submit a registration application, along with a \$200 non-refundable registration fee, to the New Home Warranty Program. The amount each builder pays for new homes enrolled is based on the builder's warranty enrollment and a sliding scale based on their performance records. ^[39]

Both the Private and State Plans provide one year coverage against defects in workmanship or materials, two year coverage against mechanical and electrical system defects, and seven year coverage against major structural defects. ^[40]

For the State Plan, unless an emergency situation arises or a major structural defect exists, a homeowner must wait 120 days from the start date of the warranty before a complaint can be filed with the builder. Once a defect is identified, the homeowner must provide written notice of the defect(s) to the builder no later than seven days after the warranty on that item expires. Upon providing written notice to the builder, the builder will have 30 days in which to conduct an inspection and respond to the request. If the matter cannot be resolved through the informal dispute settlement process, then the owner may file a Notice of Claim for dispute settlement with the DCA will designate an independent third party conciliator and schedule a conciliation hearing. Any decision delivered by the conciliator will be in writing, listing the specific actions to be taken by the builder to repair or replace defects in the home and a date by which these corrections must take place. If the parties agree the conciliator will convert the agreement into an arbitration award. If the dispute cannot be resolved through conciliation, the DCA will provide one of either arbitration or an administrative hearing. ^{[41] [42]}

For Private Plans, the law requires that new home builder warranties include a process for making a complaint, claims, and payment procedure including settlement

arrangements between the builder and the homeowner of any dispute over coverage. The law requires conciliation and/or arbitration of any warranty claim dispute by an independent, third party, and the Private Plan must provide fixed periods of time for action by the builder or homeowner, pursuant to the arbitration/conciliation decision. This procedure is described in a booklet given to each new home owner at closing. ^[43]

The DCA's website provides various resources for homeowners, but does not disclose details of new home warranty claims. ^[44]

California

California has a voluntary, multi-provider warranty system under California's construction defect law (SB 800 or the *Right to Repair Act*), which came into effect January 1st, 2003, as part of the California Civil Code. Prior to this Act, developers complained that California law was too vague. In California, the legislation provides a performance standard for which the courts, acting as the adjudicator, determine the validity of warranty claims. As such, California does not have a program administrator. ^[45]

Under the SB 800, warranty coverage includes one year for defects in fit and finish, four years for defective installation, and ten years for structural defects. ^[46]

California's dispute resolution process allows the homeowner to initiate a complaint with the builder at any time, at which point the builder has 14 days from when the homeowner submits the claim to acknowledge it. From this point, the builder has 14 days to complete the preliminary inspection (the builder can request a second inspection which must be completed within 40 days of the acknowledgement). The builder then has 60 days to make an offer regarding the repairs it is willing to make, at which point the homeowner has 30 days to make a decision in response to the builder's offer. If the homeowner does not agree with the repairs offered by the builder, the builder has 30 days to provide the homeowner with a list of three alternative contractors. Assuming that the homeowner agrees to the repairs being completed by one of the three contractors, all repairs must be completed within 120 days of this date. If the homeowner is not satisfied by the work completed, the homeowner can file a lawsuit. ^[47]

United Kingdom

The United Kingdom (UK) employs a voluntary, multi-provider warranty system which is governed by the Consumer Code for Homebuilders (the Code). This Code is a voluntary code that is led and run by the industry and was developed to make the home buying process fairer and more transparent for purchasers. The Code, which came into effect in April 2010, applies to all homebuilders registered with the UK's main new home warranty providers; National House Building Council (NHBC), Premier Guarantee, and Local Authority Building Control (LABC) Warranty and consists

of 19 requirements and principles that home builders must meet in their marketing and selling of homes and their after-sales customer service. ^[48] The NHBC is an independent, non-profit standard-setting body and provider of warranty and insurance for new homes in the UK. As of 2016, NHBC insures over 1.6m homes, and has a market share of approximately 80%. What follows focuses on the NHBC as it is the largest warranty provider in the UK. ^[49]

The Code covers complaints made in writing to the home builder within two years from the Home Warranty coverage start date. The maximum value of the combined award available through the independent Dispute Resolution Scheme is £15,000. ^[50] The NHBC provides additional coverage for homeowners from the second to tenth year in which it covers any defects related to physical damage caused by the builder failing to comply with the NHBC requirements. ^[51]

For the first two years, the claims process begins with the homeowner contacting the builder to resolve the identified issues. If the homeowner is not satisfied with the builder's response, the homeowner must then contact NHBC, which will begin the adjudication process by selecting an independent adjudicator. The adjudicator will consider both parties submissions, and will make a decision. The adjudicator's decision cannot be appealed and is either accepted or rejected by the homeowner. For years three through ten, the homeowner must make a claim online through NHBC's website. The NHBC will investigate and determine the validity of the claim within four business days (on average) from the date the claim was made. If the homeowner disagrees with NHBC's decision, the homeowner can file a complaint with NHBC's Consumer Affairs Team, which will provide a full response in 20 business days. If the homeowner is still unsatisfied at this point, the homeowner can either file a complaint with the Financial Ombudsman Service or proceed with arbitration, through the Centre for Effective Dispute Resolution. ^[52]

The Financial Ombudsman Service (FOS), which was set up by law to provide consumers with a free, independent service for resolving disputes with financial firms has jurisdiction over NHBC. ^[53] The NHBC provides various resources for consumers and salaries for its board of directors are included in its annual report. ^[54] It does not publicly disclose management salaries or details of new home warranty claims. NHBC's board is comprised of 14 members, and includes industry and non-industry representation.