

**Feedback to the Ministry of Government and Consumer Services (MGCS)
regarding regulations concerning
The Ontario New Home Warranties Plan Act
and
the New Home Construction Licensing Act, 2017**

Page | 1

Submitted to NewHomes@ontario.ca

October 19, 2020

Please direct Comments and Questions to:

info@canadiansforproperlybuilt homes.com

Founded in 2004, 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.

Table of Contents

Concerns/questions regarding some “out of scope” topics highlighted in related MGCS consultations	3
Regulation Changes	4
Focus on consumer protection	4
Administrative Authorities.....	4
Governance	5
Public Information on Licencees	5
Information sharing between Tarion and HCRA.....	5
Monitoring of approved builders/developers.....	6
Used/damaged furnaces being sold in some newly built homes.....	6
Excessive small business focus instead of protecting consumers.....	6
Professional development requirements for builders.....	7
Research.....	7
Transparency.....	7
Transition matters	7
Maximum warranty payout.....	8
Tarion’s offer for a cash settlement/Tarion to conduct the repair for warrantable items ...	8
“Better built homes”	8
Homeowners should not have the onus of proof	8
Time to appeal Tarion’s warranty decisions.....	9
Tarion’s continued ongoing use of non-disclosure agreements.....	9
Tarion offering some homeowners non-binding mediation via an independent mediator .	9
Licence Appeal Tribunal.....	10
Cost/Benefit Analysis	10

Concerns/questions regarding some “out of scope” topics highlighted in related MGCS consultations

In the Oct. 6, 2020 MGCS consultation for consumers regarding these regulations, a number of areas were deemed by MGCS to be “out of scope”.

Page | 3

Consumers asked during that session why any of these topics would be deemed out of scope during this consultation, but this was not explained.

CPBH requested a copy of the slide deck used for this consultation to prepare for this input, but MGCS manager Matthew Hellin (Manager – Home Construction and Licensing Policy Unit) refused to provide it. CPBH then asked for a list of all of the “out of scope” topics and the following topics “for this round of consultations” were provided by email by the Home Construction and Licensing Policy Unit on Oct. 19, 2020:

- *“...The split of Tarion and the creation of a separate regulatory authority, the Home Construction Regulatory Authority (HCRA).*
- *Legislation (i.e., New Home Construction Licensing Act and the Ontario New Home Warranties Plan Act)*
- *Specific composition of the Boards of Directors of either Tarion or the proposed regulatory authority, HCRA.*
- *Compensation setting or other operational matters for Tarion or the proposed regulatory authority..”*

We also understand that the Ontario Building Code was also deemed to be “out of scope” during that Oct. 6, 2020 consultation, although not included in the MGCS Policy Unit email on Oct. 19, 2020.

We do not understand why topics such as governance, compensation or the Ontario Building Code would be deemed “out of scope”. We are concerned about the potential impact these “out of scope” requirements may have on the quality of these consultations overall. We also do not understand the secrecy relating to the slide deck.

Regulation Changes

In 2013, former MPP Rosario Marchese said "Tarion is the only DAA with the power to create its own regulations without government approval". (Here at 2:18 min <https://youtu.be/c4OKhz1s2OI>)

- Changes in regulations for both Tarion and HCRA need to be approved by the Ontario Government.

Page | 4

Focus on consumer protection

- Both HCRA and Tarion need to be focused on consumer protection as their priority consideration.

Administrative Authorities

- Concerns about the DAA/AA model have been raised by various stakeholders for decades, e.g., lack of transparency and lack of accountability, but little – if anything - has been done to address those concerns.
- Further, in the case of Tarion and HCRA, concerns have been raised about duplication of effort and excessive related costs, e.g., deputation of former Tarion leader Mr. David Roberts, Jan. 22, 2020 concerning Bill 159. As one example, there is a lack of clarity regarding who has authority between Tarion and HCRA – e.g., who has the final say on whether a builder/vendor gets registered?
 - o There should be no overlap or duplication between Tarion and HCRA.
 - o Roles and responsibilities between Tarion and HCRA should be clear.
- There have also been concerns about excessive compensation for DAA/AA executives, e.g., former Tarion CEO earning more than \$800,000 annually.
 - o There should be a reasonable cap on executive compensation packages.
- There have also been concerns raised about how the mandatory DAA/AA fees paid to the Ontario Government are being used. CPBH has made submissions related to this in the past, but this issue remains. Refer to #1 here for an example of a previous submission made by CPBH
<http://canadiansforproperlybuilt homes.com/wp-content/uploads/2019/08/Jan.-17-2018-Pre-Budget-Hearing-Presentation.pdf>
 - o Ontarians deserve to know how payments from DAA/AAs are being used by the Ontario Government. There should be related transparent and objective reporting by the Ontario Government.

Governance

- Conflict of interest – and apparent conflict of interest – must not be permitted on either the HCRA or the Tarion board.
 - MPP Tom Rakocevic proposed an amendment to Bill 159 related to conflict of interest, but it was declined by the Ford Government.
 - Builder input is important but it can be provided in other ways, e.g., via a builder advisory council.
- Transparency – As a minimum, both Tarion and HCRA should be required to post publicly:
 - board meeting minutes within 90 days of a board meeting.
 - board and committee/council members' names and bios.

Public Information on Licences

- Tarion continues to pay some homeowners significant sums of money as “customer service gestures” (also known as “goodwill gestures”). These customer service gestures come out of the \$300,000 maximum paid to homeowners, but these amounts do not appear on the Tarion builder directory.
 - These amounts must be provided in the public information on licences.
- LAT decisions found in favour of the homeowner must also be included in this registry.
- Warrantable items, customer service gestures, OBC violations, and other information to be included must be reflected retroactively, e.g., for the past 10 years.

Information sharing between Tarion and HCRA

- CPBH has conducted some research on what is happening in other jurisdictions concerning information sharing between the regulator and the warranty providers. What is proposed currently for Tarion/HCRA appears excessive, e.g., please refer to British Columbia and Alberta vis-à-vis information sharing. What do the building regulators in these provinces share with their approved warranty providers? (Even though BC and Alberta have multiple warranty providers, shouldn't the information sharing be roughly the same in Ontario?)
- Does the proposed information sharing between Tarion and HCRA respect privacy laws in Ontario?

Monitoring of approved builders/developers

- Given the disastrous situations experienced by many condo and new home purchasers in Ontario that went out of business, e.g., Urbancorp, clearly Tarion needed to be monitoring the financial situation more closely and taking steps to protect consumers before it was too late.
 - o This is an important area for HCRA to address.

Used/damaged furnaces being sold in some newly built homes

- This issue was covered by CBC over a year ago and it is still going on in Ontario despite CPBH having written to Minister Thompson and Tarion about this.
<https://www.cbc.ca/news/canada/ottawa/furnace-construction-1.5188006>
- Builders have other options for heat in the winter.
 - o This practice of selling newly built homes with used/damaged furnaces must be halted immediately.

Excessive small business focus instead of protecting consumers

- The ON Gov't appears overly concerned with small builders – to the detriment to consumer protection.
- Small builders operate successfully in other provinces, including those with a multi-warranty provider model.
- As one example, in the deputation re Bill 159 by Mr. Dave Myatt on Jan. 22, 2020, he explained that he purchased from a small builder, but his home did not meet the Ontario Building Code, he didn't have adequate consumer protection, and has suffered tremendously.
- CPBH supports small builders, as long as they can build a home that at least meets the minimum Ontario Building Code, and meet other necessary requirements. The Ontario Government should be primarily focused on protecting consumers on the largest purchase most make – a home.

Professional development requirements for builders

- Many professions require ongoing professional development. This should be the case for Ontario's builders/contractors. Please refer to BC Housing's continuing professional development requirements as an example.

Research

It is imperative that Ontario's builders keep up with developments in construction.

- HCRA should be required to conduct research to achieve progressive improvement in housing quality. (There is a similar provision in the 1976 Letters Patent for Ontario's new home warranty.)

Transparency

For decades Tarion has had a reputation of having a "culture of secrecy". Unfortunately, there are already signs that HCRA is following the same pattern. Both organizations should be required to be transparent in their operations.

- As specific examples, Tarion should be required to disclose:
 - o In its audited financial statements, how much it is spending on "customer service gestures"
 - o what the criteria are to qualify for "customer service gestures" and who has the authority to make the decision as to whether a homeowner receives such gestures. This is an important fairness issue for Ontario's purchasers of newly built homes.
 - o The amount that Tarion spends on lawyers fighting consumers at the Licence Appeal Tribunal.

Transition matters

- Minister Thompson promised a "complete overhaul". There should be a distinct break between Tarion and HCRA, e.g., no shuffling of board members between the two organizations, no transferring of staff from Tarion to HCRA, and information sharing only as absolutely needed.

Maximum warranty payout

- Tarion currently caps the maximum payout to homeowners at \$300,000. This is insufficient for far too many homes. There should be no cap - Tarion should be required to pay the full costs of warrantable items and any "customer service gestures" granted to the homeowners.

Tarion's offer for a cash settlement/Tarion to conduct the repair for warrantable items

- Homeowners sometimes report that they have no choice from Tarion but to accept a cash settlement from Tarion (and repair the home themselves). In some other cases, Tarion but will agree to handle the repair instead of the homeowner having to handle the repairs. Again, this is an important matter of fairness for all of Ontario's purchasers of newly built homes
- Tarion needs to be consistent and give homeowners the choice of either a cash settlement or having Tarion handle the repair. (Often homeowners are overwhelmed at the need to handle the repair themselves, e.g., hiring qualified contractors, project managing, etc.)

"Better built homes"

- The phrase "better built homes" should not be used as it is not meaningful, e.g., the builder could hammer six additional nails in the roof and it could qualify as a "better built home".

Homeowners should not have the onus of proof

- Requiring that the homeowner prove what is wrong with the home is inappropriate and unreasonable, e.g., if there is water running down the walls due to a construction defect, the homeowner should not have to prove why.
 - o Homeowners should only need to report the problem and then Tarion should be required to determine the cause.

Time to appeal Tarion's warranty decisions

- The current 15 days is inadequate. This should be extended to 60 days, e.g., to give homeowners an opportunity to research and consult with potential lawyers to represent them at the LAT.

Tarion's continued ongoing use of non-disclosure agreements

- Although Tarion advised CPBH in 2008 in writing that it no longer requires homeowners to sign a non-disclosure agreement to reach a settlement with Tarion, some homeowners have advised that Tarion is still making this a requirement, e.g., Mr. Daniel Emery in 2020.
 - o Tarion should not be allowed to demand the homeowner sign a non-disclosure agreement in order to reach a settlement with Tarion.

Tarion offering some homeowners non-binding mediation via an independent mediator

- Tarion has started offering some homeowners non-binding mediation – at Tarion's expense – when the homeowners disagree with Tarion.
 - o This is a good step in the right direction, but it needs to be offered to all homeowners faced with this situation. This is important for fairness.

Licence Appeal Tribunal

- The LAT should be discontinued for appealing Tarion decisions. The vast majority of Ontarians have lost faith in the LAT related to appealing Tarion decisions. As noted by former Assistant Deputy Minister Frank Denton Oct. 7, 2014 *"...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..."*

and

"...The Thomson/Cohl report dated Aug. 3, 2016 also raised serious concern about the LAT's processes: "...It is hard to review such a lengthy proceeding without coming away with serious concern about how legalistic, court-like and adversarial the adjudicative process at the LAT....has become..." (p. 25).

CPBH has been conducting an annual analysis of decision outcomes for homeowners at the LAT since 2006. During that time, overall, homeowners have lost 84% of the time. In 2019, homeowners lost 100% of the time. Our annual reporting is provided at this link – scroll down to the bottom:

<http://canadiansforproperlybuilt homes.com/what-weve-learned/dispute-resolution/>

Cost/Benefit Analysis

- It is unclear what the benefits to the consumer will be once HCRA is operational. What are those benefits? The ON Government should clearly and objectively provide that information to the public.
- What will be the cost to operate HCRA annually? How much will Tarion's costs decrease once HCRA is operational? What is the net financial impact of separating the regulator and warranty provider. Again, the ON Government should clearly and objectively provide that information to the public.