



**Response to the  
Summary of Draft Regulations Proposed Under the  
New Home Construction Licensing Act, 2017  
Code of Ethics, a Discipline Committee and an Appeals Committee**

Feb. 12, 2021

Please submit questions/comments to: [info@canadiansforproperlybulthomes.com](mailto:info@canadiansforproperlybulthomes.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. CPBH earned "partner" status with the Canadian Consumer Information Gateway (Industry Canada).

Website: [www.canadiansforproperlybulthomes.com](http://www.canadiansforproperlybulthomes.com)

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## Background

Canadians for Properly Built Homes (CPBH) appreciates the opportunity to provide input to these draft regulations proposed under the New Home Construction Licensing Act, 2017. We understand that this consultation is focused on the Code of Ethics, a Discipline Committee and an Appeals Committee.

The purchase of a home is the largest purchase most make, and adequate consumer protection is essential. There continues to be inadequate consumer protection for newly built homes in Ontario.

## Definitions/explanations required

In all legislation and regulations relating to new home construction and related warranty, additional key words/terms/phrases need to be defined/explained, e.g.,

**“Properly built”** – Properly built is a phrase often used by MGCS (Ministry) staff, some MPPs, etc. We have asked Ministry staff numerous times over the years what this term means in the context of newly built homes, and no one has been able to define it. Here we have an example of Minister Thompson using that phrase as well:

*“The HCRA will ensure that new home builders and vendors are held to professional standards and that all buyers and owners of new homes are well-informed and feel confident that their homes have been built properly.”* - Minister Thompson, News Release, Feb. 1, 2021

But what does “properly built” mean to the Minister, to the Ministry, to the Ontario Government? For example, does it mean:

- Meets all applicable Codes?
- The home is the size it is supposed to be? (As one example, a homeowner recently advised CPBH that their home is 17.5% smaller than it is supposed to be, and Tarion would not assist.)
- Something else?

**“Quality”** - This is another word that Ministry staff use. But again, no one has been able to explain what this means in relation to new home construction in Ontario. Here is a link to resources that should be helpful in defining this – The American Society for Quality. [Quality Resources | ASQ](#)

Another resource that we encourage is the following [What is Cost of Quality \(COQ\)? | ASQ](#). The COQ is simple to understand and implement.

Note: Any awards given to builders obviously should be for quality – not customer service as Tarion has historically done.

**“Defect”** – here is a source for a definition of [Defect | Definition of Defect by Merriam-Webster \(merriam-webster.com\)](#)



Defects in new home construction need to be further defined in relation to latent and patent classifications. For example, in BC real estate, these are topics covered in [Property Disclosure Statements](#) by the seller to the buyer. If a defect is discoverable (without the requirement of invasive inspection techniques), e.g., a moisture meter, then it is [a patent defect](#) (being patently obvious). When an invasive inspection is required, e.g., cutting into a wall, then it is [a latent defect](#) and not reasonably discoverable.

## **Lack of reference to/compliance with the Ontario Building Code, Electrical Code, etc.**

An electronic scan of this document (Summary of Draft Regulations proposed under the New Home Construction Licensing Act, 2017) reveals that the word “code” is not mentioned in this document. In Ontario, there are a number of relevant codes involved in new home construction, e.g., the Ontario Building Code, the Ontario Electrical Safety Code, etc.

Compliance with all relevant Codes should be a key underpinning of these regulations, and they should be prominently and specifically referenced at the outset of the draft regulations proposed under the New Home Construction Licensing Act, 2017, and all other documents (e.g., legislation, regulations, etc.) involving new home construction, new home warranties, etc.

All Code violations are considered serious, especially from a health and safety perspective. While there are good builders in Ontario, unacceptably, there are also poor and marginal builders. Far too many Ontario builders deliver newly built homes with Code violations.

## **Vague and unclear statements throughout document**

Overall, while well-intentioned, many aspects of this document are simply too vague or unclear. This will lead to problems. It also raises questions about how these regulations will be enforced:

- “better protect consumers” (p. 3) –
  - o this is a vague statement that needs to be clarified. For example, if today’s consumer protection, on a scale of 1-10, with 10 being excellent, is rated a 1.3 out of 10, and with these new regulations it is a 1.4 out of 10, then that is better – but clearly inadequate.
  - o it also needs to be measurable. How will this be measured?
- “Protection of the public” – “the health and safety of all persons must be protected” (p. 5) – is this referring to the licensee ensuring that the home at least meets the Ontario Building Code, or something else?
- “Financial responsibility” (p. 5) – what does this mean?
- “Intimidation, coercion” (p. 5) –
  - o how will this be handled/enforced? Homeowners have reported a very serious situation, with very serious allegations, underway currently in which seniors are afraid to speak out as they feel so intimidated. How will their identity be protected if they come



forward? How will homeowners learn to trust this system? Sadly, there is a lack of trust currently – in Tarion, HCRA, the ON Government, the Min. of Government and Consumer Services, etc.

- does this include a builder “encouraging” homeowners not to report issues to Tarion? We hear about this regularly.
- Fees and compensation (p. 7) – this is a confusing section. It is unclear what this is about.
- “Take further educational courses” (p. 11) –
  - What educational courses are required at the outset?
  - What exactly does “further educational courses” mean, e.g., does a free on-line seminar from a consultant qualify, or does it need to be from an approved list of courses?

The above comments and questions provide some examples of vague and/or unclear statements. We encourage a complete review of the document by an independent professional editor to ensure that there is sufficient clarity throughout. As well, a review of the document is also needed to ensure that what is included is actually enforceable.

## Used/damaged furnaces sold in some newly built homes: Unethical and possibly illegal practice

It is unethical for builders to sell used/damaged furnaces in newly built homes. This serious issue of used/damaged furnaces has been raised in the media, e.g.,

In 2016 in Plumbing and HVAC:

*“...just about everyone agrees that using residential forced air furnaces for construction heat is a bad idea. Drywall dust and other construction debris leaves the new homeowner with what is basically a used furnace that may neither perform as intended nor last as long as it should...”*

<http://plumbingandhvac.ca/damaged-during-construction/>

In 2019 by the CBC:

*“...It's legal for home builders to run the furnace during construction, and many do — something many new homeowners don't know when they purchase their homes. Warming a home with its own furnace rather than with portable heaters during construction is cheap and convenient for home builders, according to Sandy MacLeod, president and CEO of the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI), the industry's trade association..”*

*“...But while experts agree the airborne debris created during drywalling and other phases of construction can reduce furnace efficiency and cause long-term damage, there's very little data on the subject, McLeod said, making homeowners' claims difficult to prove...”*

<https://www.cbc.ca/news/canada/ottawa/furnace-construction-1.5188006>



From a consumer protection perspective, the time is long overdue for the Ontario Government to stop this practice of builders using furnaces for construction heat. The cost of portable heaters in the larger scheme of things is negligible, and convenience for builders must not trump consumer protection.

Does the Ontario Government allow rental cars to be sold and labelled as brand new cars? We understand that the response to this question is “no”. Then why is the Ontario Government continuing to allow used and damaged furnaces to be sold in newly built homes? It is obviously unethical for builders to sell something that is used and/or damaged as “new”.

Further, while HRAI’s President, Sandy MacLeod, has opined in the statement quoted above from the 2019 CBC article that it is legal for home builders to run furnaces during construction, we submit that Mr. MacLeod/HRAI – and others, including MGCS - need to also consider how and whether builders disclose this to their customers. It is our understanding that few, if any, builders in Canada disclose this.

Let’s look specifically at Ontario now given that these regulations concern Ontario. In Ontario’s Consumer Protection Act, it says, under “Misrepresentation”:

*“It’s illegal for the business or individual to give you false information about themselves or the product or service they offer”.*

Is a builder passing off a used and possibly damaged furnace as “new” to the home purchaser not misrepresentation? Why is this practice not already illegal in Ontario under Ontario’s Consumer Protection Act? By way of this submission, we are requesting that your Ministry promptly answer this question.

[Your rights under the Consumer Protection Act | Ontario.ca](#)

We wrote to Minister Thompson about this serious issue in 2019, and her Feb. 7, 2020 response said:

*“...It is my ministry’s understanding that the Canadian Standards Association (CSA) is aware of this practice among builders and vendors, and is investigating the use of furnaces during home construction, including the problems this may cause. The CSA is expected to create common guidelines or standards, to be in place in 2021. We continue to watch this development closely...”*

CPBH has been in contact with CSA as well. We have learned that CSA has not investigated this matter - and never intended to investigate it. We have also learned that any guidelines/standards from the CSA will not prevent builders from using furnaces for construction heat. Your ministry must be aware of this if it has indeed watched this development closely.

If the Ontario Government allows this practice of allowing builders to use furnaces for construction heat to continue, then we submit the following steps must be taken immediately by the Ontario Government to inform and protect Ontario’s purchasers of newly built homes:



1. Builders must disclose to purchasers in the Agreement of Purchase that the furnace may be used for heat during construction and may be damaged as a result. (This falls under the heading of “Disclosure, marketing and false advertising”.)
2. Tarion’s warranty on the newly built home’s furnace must be for a minimum of five years rather than the current two years. The manufacturer's warranty on the furnace must be the same as if the furnace had not been used for construction heat.
3. Immediately prior to the transfer of the newly built home to the purchaser, each furnace must be commissioned by an appropriately qualified person and a commissioning report provided. If the furnace has been used for heat during construction, the commissioning report must also state that the furnace has been inspected, cleaned and returned to “as new” operation & performance.”

## Discipline Committee and Appeals Committee issues

“The proposed regulations will provide a framework that would address complaints to better protect consumers and hold licensees accountable for their actions” (p. 3).

- Qualified people should be appointed to these committees - not financial supporters. For example, qualified would be someone who has had “hands on” experience with the home building industry, and qualified consumer advocates.
- Who appoints people to these committees? This should be clearly stated.
- These committees must have representation from recognized consumer organizations, such as Canadians for Properly Built Homes, The Consumers Council of Canada, Consumers Association of Canada, etc.
- The Ontario Government over-utilizes certain people for boards and committees and there is typically lack of diversity generally. This is a problem. The Ontario Government must take steps to address this over-use of certain individuals and the overall lack of diversity.
- Is there compensation for those participating on these committees? This should be clearly stated.

## Insufficient urgency/priority by the Ontario Government

It is both disappointing and concerning that the Home Construction Regulatory Authority (HCRA) opened its doors Feb. 1, 2021, but these regulations are not yet finalized. This legislation was passed in 2017 – more than three years ago, and the ON Government should have made this a much higher priority.



## Other

We encourage the Ontario Government to develop a Consumer Protection Bill of Rights for Homeowners that is consistent with the principles of: <https://www.ontario.ca/page/your-rights-under-consumer-protection-act> and also <http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca03084.html> .

Thank you again for the opportunity to provide input to these draft regulations proposed under the New Home Construction Licensing Act, 2017 that are focused on a Code of Ethics, a Discipline Committee and an Appeals Committee. We hope you find our input helpful.

