

## Policy Issues concerning

## Consumer Protection

and

## Newly Built Homes

in Ontario

March 3, 2021

Page | 1

This is a living document. It will be updated from time to time.

Questions/comments? We will welcome them.

Please contact CPBH by email [info@canadiansforproperlybuilthomes.com](mailto:info@canadiansforproperlybuilthomes.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.canadiansforproperlybuilthomes.com](http://www.canadiansforproperlybuilthomes.com)

Facebook: <https://www.facebook.com/pages/Canadians-for-Properly-Built-Homes/1613240682226191>

Twitter: @cpbh01 Instagram: cpbh01

## Contents

Context.....	3	Page   2
Housing Policy Issues in Ontario.....	3	
Policy Issue 1: The need for definitions related to Ontario’s newly built homes.....	3	
Policy Issue 2: The need for legislation for transparency & accountability re Administrative Authority Oversight Fees.....	4	
Policy Issue 3: The need for legislation to ensure that the OBC is enforced by municipalities during construction, including responsibilities concerning radon.....	5	
Policy Issue 4 – The need for adequate oversight to get HCRA performing properly – it’s off to a poor start.....	6	
Policy Issue 5 – The need for legislation to end the practice of used/damaged furnaces being sold in newly built homes.....	8	
Policy Issue 6 – The need for legislation to end Tarion’s monopoly and introduce a multi-warranty model.....	9	
Policy Issue 7 – The need for legislation to replace the LAT for appeals of Tarion decisions.....	9	
Policy Issue 8 – The need to pass and implement adequate consumer protection legislation related to private home inspections.....	10	
<a href="#">Appendix 1 – Feb. 11, 2021 Article in The Lawyer’s Daily</a> .....	10	

## Context

In Canada, consumer protection is primarily the responsibility of the provinces and territories. This report is focused on newly built home policies in relation to consumer protection in Ontario. The purchase of a home is the largest purchase most people make.

Page | 3

It is well-recognized by many that there are serious consumer protection issues in Canada generally.

*"...There has been a decline in consumer advocacy since the 1980s in Canada, not because the issues are no longer important, not because there are not people to fight the fight. But largely, I believe, because funding for your work has been on a steady decline...."*

■ Senator Ringuette, Keynote Speech, Consumer 150 Conference, 2017

<https://www.piac.ca/wp-content/uploads/2017/10/Senator-Ringuette-Keynote-EN.pdf>

Regarding consumer protection in Ontario, a recent Auditor General of Ontario report highlighted numerous problems with consumer protection as well.

"Ontario needs better oversight of consumer issues, from condos and coffins to cannabis, auditor general says" -- Toronto Star, Dec. 7, 2020

<https://www.thestar.com/politics/provincial/2020/12/07/ontario-needs-better-consumer-oversight-on-everything-from-condos-and-coffins-to-cannabis-auditor-general-says.html>

## Housing Policy Issues in Ontario

### ***Policy Issue 1: The need for definitions related to Ontario's newly built homes***

Various terms are bandied about by Ministers and ministry officials when discussing homes, including "quality homes", "better built homes", "properly built homes", "defects", etc. But no one has been able to explain what these terms mean.

Refer to this document for information concerning this issue of definitions/explanations:

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2021/02/Feb.-12-2021-Final-CPBH-response-to-ON-New-Home-Construction-Licensing-Act-2017-Proposed-Code-of-Ethics-and-Discipline-Committee-and-Appeals-Committee.pdf>

## ***Policy Issue 2: The need for legislation for transparency & accountability re Administrative Authority Oversight Fees***

A number of the Administrative Authorities (AA) in Ontario relate to newly built homes. The Auditor General of Ontario's recent audits of some AAs, such as Tarion, TSSA and ESA, have highlighted many serious issues in these housing-related AAs. But the Ontario Government (MGCS) has been receiving millions of dollars annually in mandatory payments from AAs for "oversight" since 2009. What has happened to all of the mandatory oversight fees? CPBH has presented to ON Government Committees related to this issue multiple times. Refer to #2 here at this link for CPBH's presentation to a Government Committee in 2019:

Page | 4

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2019/08/Jan.-2019-Pre-Budget-ideas-standing-committee.pdf>

Here is a response from MPP Fedeli to CPBH's Committee presentation about the lack of transparency regarding these AA fees: "that's not unusual when they are trying to hide something". (Hansard, Jan. 17, 2018).

In 2015, former PC MGCS Critic MPP Pettapiece asked a question of the MGCS Minister about where these fees paid by Tarion were going, but received a vague response. Also in 2015, former NDP Critic Jagmeet Singh requested that the Ombudsman of Ontario get to the bottom of this, but after his departure from the ON Legislature, this request fell between the cracks. The Ombudsman of Ontario has refused to provide any information to CPBH about this.

At the new AA, the Home Construction Regulatory Authority's (HCRA) Interim CEO advised in Jan. 2021 that HCRA would be paying in the "range of hundreds of thousands of dollars" to MGCS for oversight fees. He further noted that Tarion would continue to pay these fees as well. Historically, Tarion has paid more than a quarter of a million dollars annually in oversight fees. In 2019, Tarion paid \$378,000 as per Minister Thompson in a letter dated Feb. 1, 2021 to CPBH.

Approximately 15 AAs are paying these mandatory oversight fees annually. Some refer to this as the ON Government's "cash cow". Some call this a "slush fund". It's important to get to the bottom of where these funds are going.

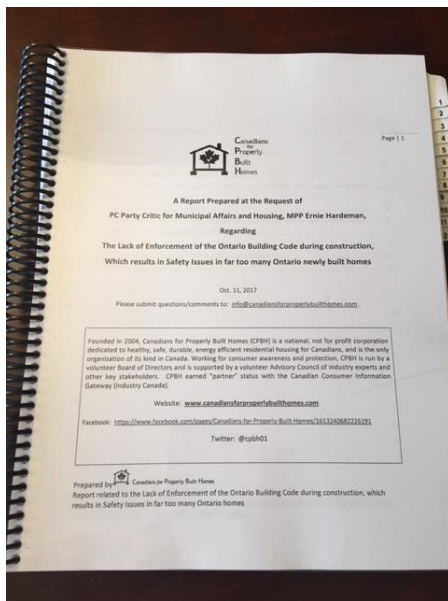
***Policy Issue 3: The need for legislation to ensure that the OBC is enforced by municipalities during construction, including responsibilities concerning radon***

The lack of enforcement of the Ontario Building Code during construction has been a well-recognized serious problem for decades now. A myriad of reasons have been cited from building booms, to the lack of available qualified inspectors, etc., for over 20 years now. CPBH prepared a 100+ page report at the request of then-PC Critic Ernie Hardeman which is still relevant today. He responded:

*"..Thank you for providing me with your report regarding the lack of enforcement of the Ontario Building Code during construction. It was extremely well done and I appreciate you taking the time to put it together. I agree that we need to look at ways to add more accountability into the system..."*

– email from PC MMAH Critic Ernie Hardeman, Nov. 10, 2017

If you would like a copy of this report, please let us know.



**Radon:** Radon is the second leading cause of lung cancer in Canada, killing more than 3,000 people every year. Issues have been raised about municipalities in ON not carrying out their responsibilities related to radon properly. As an example, here is a link to an Open Letter to the

City of Ottawa that contains considerable information on this subject, including a legal opinion that was provided to all municipalities in ON.

Note that measures to protect people against radon are inexpensive and straightforward during construction. They are less so after construction.

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2021/02/Feb.-6-2021-Ottawa-City-Council-Open-Letter.pdf>

### ***Policy Issue 4 – The need for adequate oversight to get HCRA performing properly – it's off to a poor start***

It's important to remember that both HCRA and Tarion are supposed to be "consumer protection organizations". The Ministry of Government and Consumer Services receives mandatory oversight fees from AAs, but clearly there are issues with this oversight as mentioned in #2 above.

Here are four examples of current concerns with HCRA vis-a-vis consumer protection:

#### **1. Insufficient consumer advocates on its board – just like Tarion**

There are nine director positions on the HCRA board, but only one "consumer advocate" on the board. That person's appointment only happened after CPBH raised the lack of consumer representation on the HCRA board with the media. (Appendix 1 – Feb. 11, 2021 Article in The Lawyer's Daily). That one consumer advocate has strong ties to the PC Party.

Note: The Interim CEO for HCRA, is a lawyer. Tarion's CEO is a lawyer. Why are these "consumer protection organizations" not headed up by consumer protection experts? And if not at the CEO level, why is there a dearth of such experts throughout the organizations?

#### **2. Builder directory is inaccurate and unreliable – just like Tarion's was**

A huge issue for decades has been inaccurate information on Tarion's builder directory.

Since the legislation for HCRA was approved in 2017, many, including MPPs, have spoken about the need for the new regulator to include and maintain accurate information on that directory. CPBH has communicated with HCRA Interim CEO, Tim Hadwen, about the importance of this, when he asked to meet with us as they were setting HCRA up. But it appears that HCRA has

simply dumped Tarion's old data into its system. As a result, new home purchasers are no further ahead when it comes to this important information.

Note: The Toronto Star conducted an investigation on the Tarion builder directory in 2013, and found that Tarion kept "secret" builder records. A former PC MPP referred to Tarion covering up for "rogue builders". Many who know of this situation agree that the issues identified in 2013 by The Star continue:

[https://www.thestar.com/news/canada/2013/07/08/star\\_gets\\_action\\_minister\\_to\\_work\\_with\\_tarion\\_over\\_builders\\_housing\\_records.html](https://www.thestar.com/news/canada/2013/07/08/star_gets_action_minister_to_work_with_tarion_over_builders_housing_records.html)

CPBH has recently reached out to many consumers who have received payments from Tarion and asked if their builder's directory is accurate. Not one has said it is.

### **3. Lack of adequate transparency – just like Tarion**

CPBH has repeatedly requested how many former Tarion employees have been hired by HCRA, but Mr. Hadwen, the Interim HCRA CEO, has refused to answer that question.

HCRA held four webinars in January and invited questions, but many questions asked remain unanswered. It seems that HCRA cherry picked the questions that they liked. (This is an approach Tarion adopted several years ago when it took its AGMs online, after its in-person meetings became overwhelmed with infuriated consumers.) CPBH has repeatedly requested that HCRA put the answers to all questions asked on the HCRA web site.

### **4. Lack of independence from Tarion**

HCRA has said it is independent of Tarion, but it is clear that it is not. For example:

- Tarion financed HCRA's start-up: about \$15 million as of Dec. 2019 (we are not yet sure of how much Tarion transferred to HCRA in 2020);
- Tarion/HCRA work together, e.g. sharing data/information; Tarion is collecting HCRA's fees;
- One third of HCRA's board members over the past couple of years during start-up were former Tarion board members; and
- An unknown number of former Tarion employees have been hired by HCRA.

As such, the two organizations are connected to a very significant extent. Note that organizational culture travels from Tarion to HCRA through these connections, and particularly through leadership and staff. Established culture is extremely difficult to change.

Sadly, various nicknames have emerged already on social media for HCRA, including a "pig with lipstick" and "Tarion-2". This suggests that many who follow this issue are not accepting what HCRA is saying, and see it as another, together with Tarion, builder-run organization for the purpose of protecting builder interests.

Some say that HCRA and Tarion have made a mockery of the path to a fair regime for home construction regulation and consumer protection as laid out by Justice Cunningham in his 2016 Tarion Review. <https://www.ontario.ca/document/final-report-review-ontario-new-home-warranties-plan-act-and-tarion-warranty-corporation>

### ***Policy Issue 5 – The need for legislation to end the practice of used/damaged furnaces being sold in newly built homes***

Within the following document, there is a significant section concerning used/damaged furnaces being sold in some newly built homes, without disclosure to the unsuspecting purchasers. CPBH's position is that this practice must be banned. Builders have alternate sources of heat during construction, at minimal cost to builders. It appears that a key issue is a convenience factor for builders. Builders' convenience must never trump consumer protection. More here: <http://canadiansforproperlybulthomes.com/wp-content/uploads/2021/02/Feb.-12-2021-Final-CPBH-response-to-ON-New-Home-Construction-Licensing-Act-2017-Proposed-Code-of-Ethics-and-Discipline-Committee-and-Appeals-Committee.pdf>

Since submitting that document to the Ontario Government on Feb. 12, 2021, CPBH received a legal opinion that the Ontario Government is allowing builders to break the law when it comes to furnaces in newly built homes. Here is the link to the legal opinion: <http://canadiansforproperlybulthomes.com/wp-content/uploads/2021/03/Feb.-28-2021-Moher-Legal-Letter-of-Opinion-re-Consumer-Protection-Act.pdf>



### ***Policy Issue 6 – The need for legislation to end Tarion’s monopoly and introduce a multi-warranty model***

While Tarion claims that it is moving forward in making changes related to the Auditor General’s recommendations, many homeowners continue to complain about how Tarion is treating them, e.g., denied claims, slow response times, etc. CPBH’s position continues to be that Tarion is beyond repair. Here is a link to our response to the Auditor General’s report:

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2019/11/11-3-19FinalCPBHstatement-AGofONaudit-Tarion.pdf>

Indeed, regular feedback from Ontarians continuing to fight with Tarion indicates that these deep cultural issues within Tarion continue.

Further, Tarion’s fees are only being reduced about 5% despite being stripped of its regulator responsibilities. Why was there not a substantial reduction in Tarion’s fees given the substantial reduction in responsibilities?

CPBH’s position is that Justice Cunningham’s recommendation to end Tarion’s monopoly and introduce a multi-warranty provider system in Ontario is the best option. No system is perfect – but a multi-warranty provider system is the best option.

### ***Policy Issue 7 – The need for legislation to replace the LAT for appeals of Tarion decisions***

CPBH has been conducting an annual analysis of outcomes of decisions for homeowners who have taken their appeals to the LAT since 2006. Overall, homeowners have lost approximately 85% of the time. In 2019, homeowners lost 100% of the time. Various reasons have been cited including an unfair playing field, operational problems at the LAT, most homeowners are self-represented while Tarion is always represented, etc. In recent years, most homeowners will not take their cases to the LAT. Here is a link with our 2019 report:

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2020/05/2019-Licence-Appeal-Tribunal-Analysis.pdf>

Here is a link with a special report we prepared in 2017 at the request of former Attorney General Naqvi. These issues are all still relevant:

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2019/08/Sept.-12-2017-CPBH-Final-report-for-AG-Naqvi-re-LAT-process-issues.pdf>

### ***Policy Issue 8 – The need to pass and implement adequate consumer protection legislation related to private home inspections***

The private home inspection industry in Ontario has been in turmoil for decades. There continues to be a lack of qualified private home inspectors, which is a serious consumer protection issue. CPBH encourages purchasers of newly built homes to hire their own private inspector to inspect during construction, given the ongoing problems of new home construction often not meeting the minimal Ontario Building Code. CPBH has considerable information about private home inspections on our web-site:

<http://canadiansforproperlybulthomes.com/what-weve-learned/home-inspections/>

In 2017, the Wynne Government passed “The Putting Consumers First Act”, which included private home inspection. But the Ford Government has been letting this legislation gather dust. Finally, after many inquiries, CPBH received a letter from Minister Thompson dated Feb. 1, 2021 that said:

*“...While the Home Inspection Act, 2017 was passed on April 13, 2017, it is not yet in force. My ministry is reviewing public and industry consultation feedback to determine an approach that will address their concerns. It is important that we get this right for consumers and businesses...”.*

Some wonder what “businesses” Minister Thompson is concerned about. Home inspection businesses? Builder businesses? It’s important to remember that this is coming from the Minister responsible for consumer protection.

Rumours have been swirling since 2018 that the Ford Government has conducted “secret” consultations regarding this legislation. We have raised this issue with Minister Thompson of alleged secret consultations, but she has not responded. CPBH has requested to be allowed to participate in these consultations, but we have not had a response to this request either.

Meanwhile, various industry sources have alleged that the private home inspection industry has declined 40-50% since the Ford Government took power. We have asked Minister Thompson about this alleged significant industry decline, but she has not yet answered about that. We have heard from some consumers that they could not find a qualified home inspector.

Here is a link with CPBH’s 2017 deputation regarding Bill 59 for further information:

<http://canadiansforproperlybulthomes.com/wp-content/uploads/2019/08/Feb.-23-2017-Final-CPBH-Deputation-re-Bill-59-Home-Inspection.pdf>

## Appendix 1 – Feb. 11, 2021 Article in The Lawyer's Daily

The Lawyer's Daily | 111 Gordon Baker Road, Suite 900 | Toronto, ON M2H 3R1 |

www.thelawyersdaily.ca

Real Estate

Page | 11

# Consumer group concerned about effectiveness of new home construction regulator

By John Schofield

(February 11, 2021, 9:36 AM EST) -- A consumer protection organization for new homebuyers is warning that Ontario's recently launched Home Construction Regulatory Authority (HCRA) is already making some of the same mistakes as its predecessor agency, Tarion, which was criticized by the province's auditor general in 2019 for favouring homebuilders over buyers. "HCRA has recently provided lofty statements, e.g., 'effective engagement' and 'regulatory excellence' and 'building trust,' but it is off to a very poor start," Karen Somerville, president of the Ottawa-based Canadians for Properly Built Homes (CPBH) said in an e-mail to *The Lawyer's Daily*.

The Toronto-based HCRA officially began its mandate on Feb. 1 as the agency overseeing licensing and regulatory compliance for new homebuilders and vendors. Tarion will continue to administer the new home warranty program. A 2016 independent review conducted by former Superior Court associate chief justice J. Douglas Cunningham recommended that Tarion's warranty and regulatory functions be split. "Today's launch of the HCRA is another great example of our commitment to strengthening consumer protection for our province," Government and Consumer Services Minister Lisa Thompson said in a Feb. 1 news release. "The HCRA will ensure that new homebuilders 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." But, like Tarion, the HCRA board does not include anyone with a background in consumer advocacy, said Somerville. Instead, it is made up of former high-ranking bureaucrats, a corporate executive and the president of a home construction firm. She also claimed that the information in the HCRA's public directory of builders remains unreliable, as it was under Tarion, and she expressed concern about HCRA's lack of transparency. In public webinars in January, she said, HCRA representatives did not respond to some questions and the regulator has not answered CPBH's repeated requests for information on how many former Tarion employees have been hired by HCRA. Somerville said she is concerned that HCRA is not fully independent of Tarion. "Some say," she added, "that HCRA

and Tarion have made a mockery of the path to a fair regime for home construction regulation and consumer protection as laid out by Justice Cunningham in his 2016 Tarion review.”

Edward Lynde, an associate with Toronto-based construction law firm McLaughlin & Associates and a member of the Ontario Bar Association’s construction and infrastructure law section, said that legislation has equipped HCRA with a broad mandate and stronger regulatory and enforcement powers than Tarion — but its effectiveness will depend on how well those powers are put into action. “Tarion just wasn’t working and it was failing homeowners,” he told *The Lawyer’s Daily*. “So here we are in 2021 with the HCRA. “They’re saying all the right things, and it all relates to creating a consumer-based model that leads to confidence in the marketplace with respect to residential builds,” he added.

“That being said, just like anything when there’s a seismic and large-scale change, let’s see how it actually gets implemented on a practical level. And it’s anyone’s guess frankly.” Lynde said the accuracy of the builders’ directory will be one key to restoring consumer confidence. He noted that it will include information such as the name of the licensee, number of homes built, a 10-year history, licensing conditions, offences if charged, offences if guilty and orders made by HCRA’s discipline committee. “Residential construction has been a bit of a wild west,” he said. “There are some fantastic residential builders, but there are some poor ones, too, and it’s really hard for the marketplace to understand the difference. “Hopefully this works,” he added. “Conceptually, it appears to be structured the right way. But will the investigations actually be done properly and will complaints be dealt with appropriately? It’s one thing to say it. It’s another to actually do it.”

The HCRA’s interim CEO, Tim Hadwen, a lawyer and former assistant deputy minister of education labour relations in the Ministry of Education, said the regulator will set licensing standards for conduct, competence and financial responsibility. It will go beyond Tarion, in part, he said, by establishing for the first time a code of ethics, a discipline committee for violations of the code and an appeals committee. As part of its more effective licensing process, he noted, HCRA has introduced a mandatory criminal record and judicial matters check and an attestation about the presence of interested persons (in addition to principals, directors and officers) who have a material influence over the company’s decision making. The government is conducting public consultations on the proposed code of conduct, and Hadwen said he expects it to be put in place by the end of the year. The regulator will address consumer complaints through an “accessible and streamlined” complaints process, he said, and will have a broader range of regulatory tools, including the power to set conditions on licences, to revoke and suspend licences, to issue compliance orders, to issue warnings, to require education courses and, in the future, the ability to impose fines and administrative penalties. “The overall package of developments, both legislative, regulatory and from a policy point of view,” he told *The Lawyer’s Daily*, “really strengthens the approach to licensing and compliance and does enhance consumer protection for new home buyers in Ontario.”

Hadwen said the HCRA intends to do more to maintain consistency across the sector by curtailing unethical and illegal builders and fostering a safer, fairer and more informed marketplace. To that end, it will also focus on consumer education, providing practical information to consumers to help them make informed decisions. The construction and real estate bars could potentially be more involved in helping builders and homebuyers move through the regulator’s expanded processes, he said. There may also be a need to help vendors and purchasers with certain disclosures, which will remain unchanged for now but could be updated in the future. One of the regulator’s immediate priorities is to ensure a smooth transition from Tarion, said Hadwen. To facilitate that, all valid Tarion licences will automatically become

HCRA licences and the time for filing renewals has been extended for a transitional period of 150 days. The HCRA was originally designated under the *New Home Construction Licensing Act, 2017*. The *Rebuilding Consumer Confidence Act, 2020*, passed in July 2020, is also intended to protect consumers and promote higher quality home construction.

*If you have any information, story ideas or news tips for The Lawyer's Daily please contact John Schofield at [john.schofield@lexisnexis.ca](mailto:john.schofield@lexisnexis.ca) or call 905-415-5891.*

© 2021, The Lawyer's Daily. All rights reserved