

## **April 29, 2021 – CPBH analysis of FOI documents show Ontarians misled: Ford Conservatives' baseless decision to maintain the Tarion monopoly**

Canadians for Properly Built Home's (CPBH) ongoing effort to understand the Ford Conservatives' decision to maintain the Tarion monopoly rather than implement a multi-provider warranty system has led to new information obtained through the Freedom of Information (FOI) process. The information is at odds with the government's actions and statements.

The Ford Conservatives provided a clear indication that they favoured a multi-provider system prior to the last election. Once elected, they began citing the need to study the issue, despite the then fresh evidence provided by the Justice Cunningham's year-long Tarion Review. The Justice's in-depth report indicated that Tarion should be dismantled and replaced with a multi-provider system.

The Ford Conservatives' study process was secretive and flawed. The result was a rammed-through Bill 159, the oxymoron-dubbed and tinkering-infused Rebuilding Consumer Confidence Act, which had zero support in the legislature from anyone but the Conservatives. During the clause-by-clause review, not a single modification to the Bill proposed by other parties was accepted by the Ford Conservatives.

CPBH asked repeatedly what led the Conservatives to opt for the continued monopoly system. No response was provided. At Queen's Park and to the media, Minister Lisa Thompson and Parliamentary Assistant for Consumer Services Bob Bailey referred to extensive consultations and studies prepared by the ministry showing that a modified Tarion monopoly would be in the "public interest", the focus of Bill 159 rather than consumer protection.

CPBH's many years of experience, study and consumer advocacy have long since shown that, while no system is perfect, a multi-provider warranty system is clearly in the best interests of consumers as compared to a monopoly. If a study exists that concludes to the contrary, that is of interest to CPBH and to consumers. An arduous nine-month quest to obtain documentation through FOI revealed that no final report related to any studies on this subject was found. CPBH did obtain, through FOI, a ministry consultation summary document as well as written submissions and other related documents.

### **Key findings**

CPBH's analysis of documents obtained showed that consultations took place with an initial group of 27 (including builders, insurance companies, consumers and other professionals), as well as with a second group of 10 meetings/consultations with industry professionals. CPBH found:

Support for the multi-provider system: 18  
Did not support the multi-provider system: 9  
Provided no opinion on the multi-provider system: 10

- Respondents supporting a multi-provider warranty regime were by far the largest group
- Only 11 consumers participated and two of those were affiliated with Tarion
- Two additional individuals not supporting were affiliated with Tarion
- Two individuals who did support were with new home warranty programs in Alberta and Saskatchewan
- The Insurance Bureau of Canada supports the multi-provider option
- The insurance industry is willing to compete in a multi-provider system
- The building industry pronounced themselves "agnostic" on the issue of whether to retain the monopoly or move to a multi-provider option.
- There was little to no evidence that the best option was to overhaul the current new home warranty model

Overall, the consultations were not extensive and were poorly conducted. The ministry failed to adequately advise citizens of the consultation opportunity and to properly document the exercise, poor practices for which the ministry's Deputy Minister is accountable. This failure to meet professional standards is disappointing, as is the fact that *this* is the work the Ford Conservatives substituted for Cunningham's solid Tarion Review: see appendix for comparison.

Nevertheless, the outcome clearly favours the multi-warranty provider system and knowledgeable people provided input.

The analysis also indicated the building industry characterized Tarion as "broken", believes Justice Cunningham's recommendations "all stick", and that they are "amazed" Tarion has "lasted so long despite the amount of criticism." They also remarked that "consumers are driving the change agenda" and that "that's the barometer."

Minister Thompson's press secretary, Niko Vavassis, wrote in a statement to the CBC: "After extensive consultation with home builders and home buyers it was clear that the best option was to overhaul the current new home warranty model..." <https://www.cbc.ca/news/canada/ottawa/tarion-ontario-legislation-1.5385555>

Minister Thompson is on record making similar statements as is Parliamentary Assistant Bailey. The documents show that the consultation was not extensive, indeed it was minimal, and contain no justification for continuing with the current model as the best option. As a result, the above statement is false.

### **Thompson and Ford owe Ontarians an explanation**

Why did the Ford Conservatives choose to tinker with the Tarion monopoly in the face of evidence to the contrary? Why did they tell Ontarians they had evidence favouring a monopoly when their consultation said the opposite?

The reason for this choice is of great importance to the citizens of Ontario. Every day, consumers are paying into a mandatory new home warranty that does not put consumer protection first, while Tarion executives pay themselves like royalty. Many owners of newly built homes are "house-wrecked", suffering in homes riddled with building code violations that they can neither fix nor sell, facing unresponsive builders and Tarion representatives. The available dispute resolution system at the License Appeal Tribunal is so brutally against consumers that the vast majority cannot win. The evidence for that is here: <http://canadiansforproperlybulthomes.com/wp-content/uploads/2020/05/2019-Licence-Appeal-Tribunal-Analysis.pdf>

Every day, Ontario's consumers are putting their life's savings on the line to buy newly built homes. They deserve to know why they are stuck with a dysfunctional, mandatory monopoly that favours builders over consumers, rather than a competitive model for new home warranties that protects them, like many other provinces have.

CPBH calls on Minister Lisa Thompson and Premier Doug Ford to reveal the real reason they are maintaining the Tarion monopoly and to explain to Ontarians why they have been misled. As well, if there are other related documents, provide them.



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)

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

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## April 29, 2021 – Backgrounder

### CPBH analysis of FOI documents show Ontarians misled: The Ford government's baseless decision to maintain the Tarion monopoly

The following statements guided CPBH in asking for documents through two FOI requests. Here is what CPBH learned from the documents received.

"After extensive consultation with home builders and home buyers it was clear that the best option was to overhaul the current new home warranty model," the minister's press secretary, Nicko Vavassis, wrote in a statement to the CBC. December 6, 2019 <https://www.cbc.ca/news/canada/ottawa/tarion-ontario-legislation-1.5385555>

Minister Thompson is on the record making similar statements as is Parliamentary Assistant Bailey.

What CPBH learned via the FOIs:

- There was no extensive consultation with home builders or home buyers, indeed, it was minimal
- There was no justification from these consultations to support maintaining the current new home warranty model as the best option

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"Last month, Consumer Services Minister Lisa Thompson announced the government had decided — after extensive consultation with the public and members of the building industry — to reject opening up home warranties to other providers."

January 23, 2020

<https://www.cbc.ca/news/canada/ottawa/tarion-hearing-monopoly-ottawa-1.5436115>

What CPBH learned via the FOIs:

- There was no extensive consultation with the public or the members of the building industry. The consultation was poorly conducted and minimal.

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Parliamentary Assistant Bailey stated publicly that "the studies I have seen done through the ministry..."

What CPBH learned via the FOIs:

- Copies of the final reports of these studies were requested. The response came back as "no responsive records".

**April 29, 2021 – Appendix**

**CPBH analysis of FOI documents show Ontarians misled: The Ford government’s baseless decision to maintain the Tarion monopoly**

Comparison of consultation approaches in Justice Cunningham’s Tarion Review and the Ministry of Government and Consumer Services (MGCS) Consultation/Studies

Summary – Despite the difference in approaches, both Justice Cunningham’s Tarion review and the Ministry’s approach **both had the same results: Move to the multi-warranty provider model**. The results were ignored by the Ford Conservatives and not made public.

<p><b>Tarion Review conducted by Justice Cunningham (supported by Deloitte Consulting)</b> <b>Nov. 2015- Aug. 2016</b></p>	<p><b>Ministry of Government and Consumer Services (MGCS) Consultations/Studies</b> <b>June 1, 2018 to June 30, 2020</b></p>
<p><b>Excerpt from Tarion Review Interim Report Aug. 16, 2016: “Approach and methodology”</b></p> <p>In order to gather information about the new home warranty program in Ontario and comparable programs in other jurisdictions, I consulted a variety of sources:</p> <p><b>Consultations</b></p> <p>I met with over 200 individuals from across Ontario with a range of experiences and backgrounds in dealing with Tarion. This included homeowners and industry professionals in Toronto, Mississauga, Kingston, Oshawa/Whitby, Thunder Bay, London, Niagara, Sudbury, Ottawa and Brampton.</p> <p>I met with builders, building officials, architects, engineers, consumer advocacy groups, condominium boards, home inspectors, real estate agents, lawyers, as well as Tarion’s employees, Corporate Leadership Team, Consumer Advisory Council and Board of Directors.</p> <p>In addition, I met individually with a number of subject matter experts, including dispute resolution experts, Tarion’s Ombudsperson, and building specialists as well as current and former Board members, several members of the Legislature, and homeowners.</p> <p>The purpose of these consultations was to understand the current state of the warranty program and Tarion, and to encourage discussion and elicit ideas for improvement.</p>	<p>CPBH obtained information via two Freedom of Information requests. The documents did not contain any statement about the approach to the consultation, just the results.</p> <p>There were two sources of information identified related to studies and consultations:</p> <ol style="list-style-type: none"> <li>1. Feedback that the Ministry received in response to the February 2019 announcement: 27 (including builders, insurance companies, consumers and other professionals). Note: There were only 11 consumers and two of them were affiliated with Tarion.</li> <li>2. 10 additional consultations where the Ministry subsequently sought out consultations with professionals across the industry</li> </ol>



### Written submissions

Between November 5, 2015 and July 8, 2016, I received 529 written submissions from 80 individuals and 15 organizations or associations through the Tarion Review email address.

I also received input through two independent surveys conducted by Canadians for Properly Built Home (126 respondents) and by the Ontario Association of Certified Home Inspectors (177 respondents).

### Jurisdictional scan

A review of nine other jurisdictions was completed. The review compared Ontario's legislative framework for its new home warranty program with comparable Canadian and international jurisdictions.

The Canadian jurisdictions include British Columbia, Alberta, Manitoba, Quebec, Saskatchewan, and Atlantic Canada, and internationally, New Jersey, California, and the United Kingdom.

The research included on-line reviews of the legislative framework and government/program administration websites, as well as follow-up phone discussions with several program administrators.

### Other sources of input

I also consulted other sources of input including:

- Ms. Genevieve Chornenki's Independent End-to-End Dispute Resolution Process Review (<http://www.tarion.com/About-Tarion/Pages/Dispute-Resolution-Review.aspx>), commissioned by Tarion in 2015,
- the Canadian Home Warranty Council Report on New Home Warranties for Canadian Consumers (2010),
- the Review of the New Home Warranty Program Business Model (KPMG, 2010),
- the Delegated Administrative Authority Model Review ([https://www.tarion.com/New-Home-Buyers/Documents/DAA\\_Model\\_Review\\_Report.pdf](https://www.tarion.com/New-Home-Buyers/Documents/DAA_Model_Review_Report.pdf)) (2009),
- the Ontario Ombudsman's report Building Clarity (<https://www.ombudsman.on.ca/Ombudsman/files/05/05c9fc2b-93f1-4174-951e-7bc13b55a37d.pdf>) (2008), and
- the Consumer Council's report on Gaps in New Home Warranty Coverage across Canada (2007)."