



A Brief Report Related to the Licence Appeal Tribunal (LAT) and Tarion

2006 - 2023

Submitted to:

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“The LAT: The Place that Fairness Forgot”

Please submit response, questions/comments to: info@canadiansforproperlybulthomes.com

Founded in 2004, Canadians for Properly Built Homes (CPBH) is a 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).

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Prepared by Canadians for Properly Built Homes

Report related to the LAT Decisions and the *Ontario New Home Warranties Plan Act*

Summary Analysis of the period 2006-2023 and Related Discussion

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Introduction

Since 2006, Canadians for Properly Built Homes (CPBH) has conducted an annual analysis of the Licence Appeal Tribunal's (LAT) decisions concerning homeowners' appeals of Tarion's decisions.¹

Overview of Homeowners' Success at the LAT re Tarion in 2023

Once again, in 2023, Ontario's purchasers of newly built homes overwhelmingly decided to not go to the LAT to fight Tarion. There were only four LAT decisions in 2023, involving four items in total.

The good news is that in 2023 one of the homeowners won at the LAT! The homeowner who won is a lawyer, but had no special expertise or experience in the subject matter of the hearing, as noted by the LAT in the decision. The other three homeowners were self-represented from a legal perspective.

In 2023, there were four decisions, involving four items in total. One homeowner won their case, so homeowners' success rate in 2023 was 25%. The reason the percentage is so high is because the number of items was so low.

A few other 2023 highlights:

In one of the cases that was unsuccessful, the homeowner did have an expert testify, but the LAT found that Tarion's expert was more persuasive than the homeowner's expert.

In another case, a homeowner reached a settlement with Tarion and the builder in a case conference. But afterward, the homeowner changed their mind and wanted the appeal re-opened as the homeowner alleged that they were compelled to settle by the Tribunal Vice-Chair during the case conference. Tarion and the builder disagreed with reopening the case. The issue of whether the case could be reopened went to the LAT, arguments were considered, and the LAT would not reopen the appeal. Both Tarion and the builder were represented by legal counsel, while the homeowner was self-represented.

In two of the cases that were unsuccessful, the builder was included as an "added party". So in those cases, it was the homeowner against Tarion AND the builder.

Again, it is important to note that Tarion is **always** represented by a lawyer/paralegal and often will have technical support.

¹ For previous years' reports, please go to <https://canadiansforproperlybulthomes.com/what-weve-learned/dispute-resolution/> and scroll down to the bottom of the page.

Overview re Homeowners' Success at the LAT re Tarion - 2006 to 2023

Ontario's purchasers of newly built homes **have lost 84%** of the items appealed at the LAT in relation to Tarion's decisions from 2006 to 2023.

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Is it any wonder that the vast majority of Ontarians will not go to the LAT to fight Tarion's decisions given these historical outcomes?

Also, most people are shocked to learn that the LAT does not have the ability to enforce its own decisions. This seriously impacts the credibility of the LAT. CPBH has raised this issue with several authorities over the years, including Minister Doug Downey, the current Attorney General of Ontario, but this situation remains.

So why do so few homeowners go to the LAT to appeal Tarion decisions?

Please refer to our 2022 report for CPBH's perspective on this:

<https://canadiansforproperlybulthomes.com/wp-content/uploads/2023/06/2022-LAT-Report-final.pdf> .

What happens when people refuse to go to the LAT to try to resolve disputes with Tarion and/or lose at the LAT?

Please refer to our 2022 report for CPBH's perspective on this:

<https://canadiansforproperlybulthomes.com/wp-content/uploads/2023/06/2022-LAT-Report-final.pdf> .

CPBH's previous recommendations stand:

- The Government of Ontario must immediately replace the LAT for these appeals as this is a critical component of the consumer protection and justice system;
- The replacement organization must have:
 - o Adjudicators with specialized training related to new home construction, as well as appropriate training related to working with self-represented litigants;
 - o Operational processes that are fair, efficient, transparent and easy to navigate;
 - o The ability to enforce its own decisions;
 - o An independent review of whether Tarion's construction performance guidelines are appropriate to be used by the LAT in adjudications, and if it is determined that they are not, another means of assessment that is fair and appropriate; and
 - o A substantial public relations campaign to help restore faith in Ontario's legal system.

Relatively recent related development – Tarion's "independent mediation"

Tarion has a relatively new process, that Tarion calls "independent mediation". Please refer to Appendix 1 for some information and discussion regarding Tarion's mediation process.

Appendix 1 – About Tarion’s “independent mediation”

As noted on Page 3 of this report, Tarion has introduced what Tarion refers to as “independent mediation”. This is described by Tarion as follows:

“An independent way to dispute Tarion’s warranty assessments through an easy & cost-effective process than a formal hearing at the Licence Appeal Tribunal.”

Source: <https://www.tarion.com/homeowners/alternative-methods-resolving-claims>

(Retrieved April 6, 2024.)

The following appears on the Government of Ontario’s website:

“As of July 1, 2021, in most cases, if you disagree with Tarion’s assessment of your warranty claim, you can request Tarion to participate in mediation to resolve it.

Mediation is an option that allows homeowners to [resolve warranty claim disputes regarding their new home with Tarion](#). The dispute is settled only if the homeowner (or the condominium corporation, where applicable) and Tarion agree to the settlement. Mediation also applies to warranty claim disputes involving common elements in condominium corporations with residential units.

Mediation is a collaborative process supported by a neutral and impartial mediator. It takes place in a private, informal setting with a non-confrontational atmosphere. It provides an alternative way to resolve a warranty claim dispute before needing to go to the [Licence Appeal Tribunal \(LAT\)](#) or [court](#).

This process is outlined in the [Mediation Prior to Notice of Decision regulation](#) and applies to mediations requested by a homeowner or offered by Tarion after July 1, 2021.” Source:

<https://www.ontario.ca/page/mediation-new-home-warranty-claims#:~:text=Mediation%20is%20an%20option%20that%20allows%20homeowners%20to,where%20applicable%29%20and%20Tarion%20agree%20to%20the%20settlement.>

(Retrieved April 6, 2024.)

While on the surface Tarion’s mediation process appears to be a step in the right direction, there are some related questions/concerns. Here are some examples:

- **Independence/Lack of Perception of Independence** - While Tarion calls this “independent mediation”, this process is not independent of Tarion. For example,

- Homeowners have to request mediation through Tarion – not a separation organization.
 - This process is run through Tarion - not a separate organization, like the LAT.
 - Tarion provides homeowners with a “Roster of Mediators”. But who makes sure that all of the mediators on this list are “neutral and impartial” as the Ministry says? As one example, the list that Tarion provided for 2024 includes a former Tarion senior official.
 - The Ministry is paid annually by Tarion to “oversee” Tarion. Does the Ministry ensure that all of the mediators are fully independent of Tarion, there is no conflict of interest, etc.?
 - as noted above, the Ontario Government’s website says, “As of July 1, 2021, in most cases, if you disagree with Tarion’s assessment of your warranty claim, you can request Tarion to participate in mediation to resolve it...”. Who decides who is allowed to go to mediation – Tarion? If it is decided that the homeowner cannot proceed to mediation, is there an appeal process?
- **Homeowners required to sign a Non-Disclosure Agreement (NDA)** – Many people are reluctant to sign a non-disclosure agreement. Indeed, there is a significant movement in Canada to ban NDAs. If a homeowner wants an NDA, fine. But if a homeowner does not want an NDA, why are they being forced to sign one in order to participate in Tarion’s mediation?
- **“Non-confrontational atmosphere”** - As noted above, the Ministry states that it is a “non-confrontational atmosphere”. How does the Ministry ensure that this is the case, e.g., is there a Ministry staff member or some other independent person observing each mediation to ensure that it is indeed a “non-confrontational atmosphere”?
- **Final settlement?** – Mediations can be very high-pressure to homeowners, especially given that the stakes can be high for the homeowners. The purchase of a newly built home is the largest purchase that most people make. Some homeowners’ claims to Tarion are in the hundreds of thousands of dollars.

As noted above, Tarion refers to its mediation as an “easy” process, which may mislead homeowners. Can a homeowner change their mind after agreeing to a settlement in the mediation, and not accept the settlement? Or is the mediated settlement final? If the mediated settlement is final, who has the authority to make that decision?

- Note: In 2023, as noted earlier in this report, there was an LAT decision concerning a homeowner who had reached a settlement with Tarion and the builder in a case conference. But afterward, the homeowner changed their mind and wanted the appeal re-opened as the homeowner alleged that they were compelled to settle by the Tribunal Vice-Chair during the case conference. Tarion and the builder disagreed with re-opening the case, and argued that issues were settled. Then the matter was taken to the LAT,

and, after consideration, the LAT decided that the appeal would not be re-opened. In that LAT hearing, both Tarion and the builder were represented by legal counsel, while the homeowner was self-represented.

- **Lack of transparency:** Given that Tarion’s mediation process was implemented in 2021, understandably often homeowners want to know how homeowners have made out with it. In 2022 Tarion had a statement on its website that it would publicly post key statistics related to this new mediation process on Tarion’s webpage later that year. But that information did not appear in 2022. CPBH has followed up with Tarion a number of times about this. Recently Tarion responded, and said:

“With respect to the posting of statistics relating to mediations, at this time we are continuing to work with the Ministry in order to land a format of reporting that meets the goal of transparency while respecting the confidentiality rules set out in the legislation...”

Minister Todd McCarthy’s ministry (the ministry now called Public and Business Service Delivery) has responsibility for – and gets paid by Tarion – to oversee Tarion. Why is this reporting not being given a higher priority? Posting these statistics was promised in 2022. Why is it still outstanding in 2024?

CPBH has recently written to Minister McCarthy about this, and other Tarion mediation-related questions and concerns. We await Minister McCarthy’s response.

For further information on Tarion’s “independent mediation”, please review the Tarion website and/or contact Tarion directly.