



NEWS RELEASE

CPBH Releases Analysis of 2006 LAT Decisions on Consumer Complaints against Tarion: Call for Independent Study

OTTAWA, ONTARIO – March 26, 2007 Canadians for Properly Built Homes (CPBH) released today *An Analysis of the Ontario Licence Appeal Tribunal's Decisions relating to the Ontario New Home Warranty Plan Act: 2006* and is **calling on the Government of Ontario** to commission an independent study of these decisions.

The analysis shows that in 2006, Ontario homeowners achieved a very low success rate – 15.8% overall – when they appealed decisions made by the Tarion Warranty Corporation to the LAT concerning the warranty coverage of their newly built homes. The analysis also shows that, of the 23 issues raised in 11 claims made about major structural defects, homeowners had a zero success rate. The reasons for this lack of homeowner success are not clear.

Given the importance of consumer protection in the purchase of newly built homes, an independent study should be undertaken to determine the reasons for this lack of success. CPBH recommends an analysis of the effectiveness of the LAT in meeting its claims as a "fair, efficient, impartial and independent means to appeal decisions concerning compensation claims"¹, using these 52 cases from 2006 as the basis for the study. The homeowners who appeared before the LAT should be invited to participate to provide their views on their experience.

"Unless homeowners can win major structural deficiency claims, the Tarion Warranty Corporation warranty essentially ends at the end of the second year after the purchase of a new home," said Karen Somerville, President of CPBH. "Given the complexities involved in home building, and that a home is the largest purchase made by most consumers, a warranty period of two years is far too short."

Details of CPBH's analysis, conclusion and recommendations are contained in the attached document. As well, the LAT reviewed CPBH's analysis and does not dispute it. The LAT's response is also attached.

Ontarians deserve and need meaningful consumer protection on the largest purchase most of them ever make: a new home. CPBH supports this goal for Ontarians and all Canadians.

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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 has supporters in different parts of Canada, is undertaking projects at the municipal, provincial and federal level and offers a variety of ways for Canadians to get involved. Visit www.canadiansforproperlybuilt homes.com.

For further information, media may contact: Connie Cochran, (613) 831-1871; E-mail: media@canadiansforproperlybuilt homes.com

¹ LAT web-site: <http://www.lat.gov.on.ca/english/about/rolefunction.htm>



An Analysis of the Ontario Licence Appeal Tribunal's Decisions relating to the *Ontario New Home Warranty Plan Act: 2006*

Introduction

Many Ontario new homeowners -- from virtually all regions of the province -- have advised Canadians for Properly Built Homes (CPBH) that they are dissatisfied with the services of Tarion Warranty Corporation (Tarion). Ontario homeowners may appeal Tarion's decisions to the Licence Appeal Tribunal (LAT). While the LAT hears cases related to other matters such as funeral homes and car dealers, this analysis is limited to newly built homes.

The LAT web-site provides considerable information, including the following statements:

- "...The Tribunal provides a fair, efficient, impartial and independent means to appeal decisions concerning compensation claims...."
- "...The Tribunal is designed to give you a simple, timely and inexpensive way to settle disputes concerning compensation claims..."
- "...Do I need a Lawyer or Agent to represent me? You may use a representative of your choice or you may represent yourself or you may wish to hire a lawyer or an agent. Please note that the Tribunal does not arrange or pay for representation. This is an individual decision of each party....."

It appears that some Ontario government officials measure homeowner satisfaction with Tarion via the number of appeals to the LAT. For example, in a letter dated Jan. 22, 2007 to CPBH from Minister Phillips, the Minister responsible for consumer protection as well as Tarion, Minister Phillips made the following statement: "...*In the last year, of the over 460,000 homes enrolled in the warranty program, less than one per cent of the homeowners brought appeals to the LAT....*"

However, CPBH has heard directly from many homeowners that they will not go to the LAT to settle their disputes with Tarion for two main reasons:

- The relatively low success rate for homeowners at the LAT, and
- The need to hire a lawyer, given that Tarion is typically represented by a lawyer.

Therefore, CPBH has undertaken an analysis of some of the key aspects of the Decisions made by the LAT in relation to Tarion for the calendar year 2006. The information used for the analysis was obtained from the LAT's web-site. The analysis is presented in this report. It does not include the results of other responsibilities of the LAT such as the 118 prehearings and 36 adjournments that were reported under the 2006 results on the LAT web-site. This report also presents a conclusion and related recommendations.

Important Note: A draft of this report was provided to the LAT for comment. The LAT's comments are provided at the end of this report in the form of two page facsimile dated March 22, 2007.

Analysis

Overall success of homeowners at the LAT

In 2006, 52 decisions were issued by the LAT related to the *Ontario New Home Warranties Plan Act*. There were 208 issues included in these 52 Decisions, and homeowners experienced success in relation to 33 of their issues (15.8%). Table 1 summarizes these results.

Table 1: Success of homeowner claims at the LAT in 2006

Total Decisions	Number of issues presented by homeowners	Success of homeowners based on total issues presented
52	208	33 (15.8%)

Success of major structural deficiency claims

Tarion's warranty ends at the end of the second year after assuming possession of the home, except for major structural deficiencies, which are warranted for seven years. In 2006, there were 11 major structural deficiency Decisions, involving 23 issues. As shown in Table 2, none of these Decisions was in favour of the homeowner.

Table 2: LAT - Summary of Major Structural Claims in 2006

Month	No. of Items	LAT chair	Accepted by the LAT?
Feb.	1	Sanford	No
Apr.	1	Sanford	No
May	5	Laurin	No
June	1	Sherman	No
June	1	Laurin	No
June	1	Koprowski	No
Aug.	9	Laurin	No
Aug.	1	Israel	No
Sept.	1	Israel	No
Sept.	1	Sproule	No
Dec.	1	Koprowski	No
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Representation by Lawyers and Technical Support

Homeowners and Tarion can choose to be represented by legal counsel, and/or technical support (such as home inspectors and engineers) --- at their own expense. Table 3 provides a summary related to the 52 Decisions in 2006. It shows that 6% of homeowners were represented at the hearings by legal counsel, 12 % of homeowners had technical representation, with another 6% of the homeowners supporting their claims with technical reports. Tarion had legal representation 100% of the time, and was further represented by technical support in 23 % of the Decisions.

Table 3: Legal and Technical Representation/Reports at the LAT for 2006

	Homeowner	Tarion
Represented at the hearing by legal counsel	3 (6%) Note 1	52 (100%)
Represented at the hearing by technical support	6 (12%) Note 2	12 (23%) Note 3
Provided a technical report(s) only (no representation in person at the hearing)	3 (6%)	0

Note 1: In addition, one homeowner (the applicant) was a lawyer.

Note 2: In addition, three homeowners (the applicants) were engineers.

Note 3: In addition to the Tarion (technical) representative.

Decisions by LAT Chairs

An analysis of the success of homeowner claims by each LAT Chair was also undertaken. This revealed that there were 13 different LAT chairs that rendered these 52 Decisions in 2006. These results are presented in Table 4.

Table 4: LAT - Summary of Homeowner Success by LAT Chair

LAT Chair – Surname	No. of Decisions	No. of issues considered	No. of issues allowed	Homeowner success rate: per cent (rounded)
Dann	3	3	1	33
Diamond	3	62	9	15
Flude	4	31	5	16
Garbe	1	1	1	100
Israel	9	15	2	13
Kopowski	7	9	2	22
Laurin	5	19	0	0
McIntosh	4	18	7	39
Sanfold	2	2	0	0
Sherman	3	3	0	0
Sproule	1	4	0	0
Wallace	5	32	4	13
Weary	5	9	2	22
Total	52	208	33	16

Location of LAT Hearings

Homeowners and Tarion must pay for their own travel and related costs related to the LAT. An analysis of the hearing location revealed that the vast majority (79%) of the LAT hearings for the province of Ontario related to the ONHWP took place in Toronto. Table 5 provides these results.

Table 5: Decisions: By Location

Location of hearing	No. of hearings	%
Toronto	41	79
Ottawa	7	14
Telephone	2	4
Windsor	1	2
London	1	1
Total	52	100

Conclusion

It is clear from this analysis that homeowners experienced a very low success rate (15.8%) overall when they took their issues to the LAT. It is also clear that homeowners were not able to convincingly present their cases at the LAT related to major structural deficiencies, given that there was not one successful appeal of a major structural deficiency in 2006. However, the reasons for this lack of homeowner success are not clear. For example, were homeowners unsuccessful because:

- they entered into a legal process (the Tribunal itself) without legal representation and were at a serious disadvantage because their opponent (Tarion) always had legal representation?
- they did not have sufficiently qualified technical representation (such as home inspectors and/or engineers) at the LAT hearings?
- they did not present technical reports (prepared by a qualified technical representative such as home inspectors and/or engineers) to the LAT?
- they presented issues that were clearly not within the bounds of the *Ontario New Home Warranties Plan Act*?
- they did not have the experience that Tarion does in appearing before the LAT?
- they were not fairly treated by the LAT Chair?
- they were not fairly treated by the LAT process?

Recommendations

While the LAT claims to provide a “fair, efficient, impartial and independent means to appeal decisions concerning compensation claims”, serious questions have been raised by homeowners as to whether the LAT is meeting its objectives in this regard. Further, not only should a process be fair, it also must be *perceived* to be fair. Therefore, it is recommended that an independent study be undertaken to analyze the effectiveness of the LAT in meeting its claims, using these 52 cases from 2006 as the basis for this study. The following are among the issues that should be explored in this study:

- The low rates of homeowner overall success;
- The total lack of homeowner success relating to major structural deficiency claims;
- The costs for each of these 52 cases including:
 - The estimated cost to repair the items presented to the LAT;
 - The out-of-pocket costs for the homeowners to present their cases to the LAT including technical experts, legal, travel and accommodation, lost wages;
 - Tarion's estimated costs to prepare for and present their cases, including legal, technical and related overhead;
 - The builder's estimated costs to prepare for and present their cases, including legal, technical and other overhead;
 - The cost of the LAT itself in relation to the costs to repair/resolve the homeowners issue(s) in the first place.

As well, the following issues should be included in the study:

- The process for ensuring that the LAT chairs are impartial and independent;
- The qualifications of the LAT chairs to decide on cases related to home construction;
- The process used to ensure that the Chairs are reasonably consistent in their approach in these hearings;
- The number of homeowners who decided to bypass the LAT and instead go to the civil court system, and the reasons for the homeowners bypassing the LAT;
- A comparison of the results of cases that lost at the LAT and then proceeded to the civil court process.

As part of this study, all of the homeowners who appeared before the LAT in 2006 for these 52 Decisions should be invited to participate to provide their views on their experience with the LAT. As well, those who went before the civil courts instead should also be invited to participate.

It is recommended that a retired judge, such as former Supreme Court Justice Frank Iacobucci, who recently chaired the Special Committee on Delayed Closings relating to Tarion, be retained to lead this study.

CPBH would be pleased to assist in this study in any way possible. In addition, CPBH requests the opportunity to review and provide comments related to the Terms of Reference for this study prior to finalization.

Once the study has been completed, recommendations for improvement should be developed and presented to the Government of Ontario by the person leading this study. The results of this review and the related recommendations should be made available to the public.

Canadians for Properly Built Homes
March 23, 2007

Licence
Appeal
Tribunal

12th Floor
1 St. Clair Ave. W.
Toronto ON M4V 1K6

Telephone: (416) 314-4260
1-800-255-2214

Fax: (416) 314-4270
(416) 314-6307
1-800-720-5292

Tribunal
d'appel en
matière de permis

12^e étage
1 av St. Clair O
Toronto ON M4V 1K6

Téléphone : (416) 314-4260
1-800-255-2214

Télécopieur : (416) 314-4270
(416) 314-6307
1-800-720-5292



BY FACSIMILE (613) 248-4691

March 22, 2007

Karen Somerville
President
Canadian for Properly Built Homes
P.O. Box 11032, Station "H"
3659 Richmond Road
Ottawa ON K2H 7T8

Dear Ms. Somerville:

Thank you for the opportunity to comment on your draft report regarding the 2006 Ontario Licence Appeal Tribunal's decisions relating to the *Ontario New Home Warranties Plan Act*.

The Tribunal hears appeals pursuant to 20 different statutes including the *Ontario New Home Warranties Plan Act*. It issues decisions based on the relevant statute or regulation, the law and the evidence that is submitted by each party to a proceeding.

The choice to represent oneself or to hire a lawyer or an agent is an individual decision of each party. The Tribunal provides relevant information to unrepresented parties through:

- its website
- written appeal brochures
- Rules of Practice that set out disclosure requirements, and
- a document entitled "Frequently Asked Questions"

LAT's decision-making power is exercised independent of Tarion and the Ministry. Once a decision is released, a party to a proceeding who disagrees with the decision rendered by the Tribunal can appeal to the Divisional Court of the Superior Court of Justice within 30 days. Furthermore, where a party is of the opinion that it has not been treated fairly, that party may have grounds to apply to the Court for a judicial review of the Tribunal's decision.

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With respect to your analysis of statistics relating to LAT decisions, we have reviewed our records. They indicate that of the 57 decisions determining the claims, issued by the Tribunal between January 1, 2006 and December 31, 2006, the homeowner was successful, at least in part, in 16 cases.

The LAT Vice Chairs and Members are experienced adjudicators and many are lawyers. In addition, they receive ongoing training in hearing procedures as well as on substantive issues related to the types of hearings that come before them.

The LAT process is fair and efficient. On average, the process takes less than four months from receipt of the request for a hearing to the date a decision is rendered. A hearing relating to the *Ontario New Home Warranties Plan Act* usually takes one or two days and is held in the major centre throughout Ontario closest to the location of the property. Your chart which indicates that the majority of the hearings are held in Toronto reflects the fact that the majority of appeals with respect to property are in the GTA.

We trust this information is of assistance to you and your organization.

Yours truly,



Francine Blais
Chief Administrative Officer and Registrar

- c. Minister Gerry Phillips, Government Services – Fax: 416-327-3790
- Mr. Joe Tascona, Conservative, Government Services Critic – Fax: 416-325-4620
- Mr. Michael Prue, NDP, Government Services Critic – Fax: 416-325-1367



Canadians for Properly Built Homes

P.O. Box 11032, Station "H", 3659 Richmond Road, Ottawa ON K2H 7T8 Canada
www.canadiansforproperlybulthomes.com

Canadians for Properly Built Homes: Background

Canadians for Properly Built Homes (CPBH) was founded in 2004 by Karen Somerville and Alan Greenberg, a couple who faced serious problems with their newly built home in Ottawa, Ontario. In trying to solve their own home problems, they talked to many homeowners, as well as builders, home inspectors, engineers and others involved in the home construction process. They learned that there are serious problems in Canada from coast to coast. Undoubtedly, the worst housing disaster in Canadian history relates to the "BC leaky condo" crisis, which continues to this day. While there are good builders, there are, unfortunately, also poor builders, and consumers currently have no objective, reliable means of knowing who the good builders are.

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's Advisors and Board members have diverse backgrounds including the following professions: architecture, engineering, home building, home inspection, real estate, home renovation, environmental medicine, industrial hygiene, insurance, law, academe, political science and business. CPBH has more than 40 volunteers in different parts of Canada.

Consumers from many regions of Canada communicate with CPBH regularly, raising their issues and concerns and asking for assistance. Unfortunately, home construction defects present considerable problems for homeowners at all stages of life: from young adults barely able to scrape together their down payment for their first home through to senior citizens who are often on fixed incomes. While there are builders who will quickly and appropriately address these construction defects, there are also builders who will not. In some of these cases, warranty programs and government officials are unwilling or unable to assist the homeowners, which, unfortunately leaves the homeowners to fend for themselves. Once faced with this situation, homeowners quickly learn that there is insufficient consumer protection for the largest purchase most consumers ever make: a home.

In less than three years, CPBH has already had considerable successes. For example, CPBH representatives have appeared on television, for instance, CTV's W-Five in 2005 as well as a variety of appearances on local news broadcasts on CBC and CTV, and radio talk show programs such as Peter Warren's program from Victoria, BC. Articles written by CPBH representatives have been published in national magazines such as *The Canadian Home Inspector* and *Real Estate Marketing*. Numerous newspaper articles have referenced the work of CPBH, including the *Globe and Mail*, the *Toronto Star* and the *Ottawa Citizen*, which, in a Sept. 2006 article, referred to the CPBH web-site (www.canadiansforproperlybulthomes.com) as "among the most consulted real estate websites in Canada". Further, a number of different organizations seek the input from CPBH as government programs are developed. CPBH was recently advised by the Federal Minister of Health, Minister Clement, that it will be contacted in the near future to provide input relating to the *Clean Air Act*. As well, a CPBH representative recently participated as an expert on a national round table relating to indoor air quality. In addition, CPBH has recently made presentations to officials with Environment Canada and Natural Resources Canada in relation to energy efficiency issues and opportunities in newly built homes. CPBH also received key campaign promises from the Conservative Party of Canada prior to the Jan. 2006 federal election, and is very pleased to see the federal government moving forward to keep these campaign promises.

CPBH enjoys considerable grass roots support from across Canada from many homeowners, and potential homeowners. As well, many professionals working in the home inspection industry, the home construction industry, and government officials have expressed their support for CPBH and its work. CPBH receives no government funding, and relies on donations to cover its operating costs.
