

Statement by Canadians for Properly Built Homes

Monopoly continues, consumers suffer: Ford Government punts issue with 9 more months of study

Response to the Ontario Government's Announcement regarding Changes to the Tarion Warranty Corporation

Ottawa ON – Feb. 20, 2019 Unfortunately, today's announcement by the Ford Government does not undertake the necessary changes to Ontario's new home warranty, clearly recommended by Justice Cunningham after a 13 month review, required to adequately protect Ontario's consumers¹. Instead, today's announcement provides for some further slow incremental change. Today's announcement also falls significantly short of what Premier Ford and his party said before they were elected in 2018.

Broadly speaking, today's announcement:

1. commits to the Wynne Government's legislation passed in Dec. 2018 to separate the warranty provider and regulator roles - continuing to use the highly criticized Delegated Administrative Authority Model²;
2. commits to further study/consult related to Justice Cunningham's main recommendation to end Tarion's monopoly (and introduce a competitive warranty model), and

¹ Read the Judge's report that he delivered to the Ontario Government in Dec. 2017 here: <https://tinyurl.com/lvfyqf2> .

² For decades now, DAAs have been strongly criticized by many, including former MGCS Critic, PC MPP Jim McDonnell, who in 2016 introduced Bill 58, Delegated Administrative Authorities Accountability and Transparency Act. In a June 2018 e-mail concerning the Wynne Government's response to the Tarion Review MPP McDonnell said: *"When the previous Minister admitted Tarion had drifted too far from government, we agreed and highlighted the issue wasn't just Tarion but the entire DAA model. Accountability and transparency remained a key plank in our election platform and will form the basis of future PC government policies. Concrete and certain action to reform DAAs would need to come as government legislation. We committed to meaningful consultation with stakeholders and to a set of policymaking principles that value input, review and revision to ensure we get it right the first time, unlike the previous government's approach of legislating first and asking questions later. We fully intend to apply those principles while delivering our commitments to accountability across government, and I look forward to having CPBH as a valuable partner at the consultation table soon."* CPBH has written to Minister Walker and asked him what he plans to do to address the serious shortcomings of the DAA model. CPBH also raised this issue in January 2019 with the Standing Committee on Finance and Economics. So far, the Ford Government remains mute on the DAA model.

3. attempts to "fix" some aspects of Tarion's role including its Builder Directory which the Wynne Government also committed to in 2013 after the Toronto Star found Tarion keeps "secret" records. More here <https://tinyurl.com/gtgfuxb> .

Overall, this small step is very disappointing from a consumer protection perspective. The last thing that suffering Ontario purchasers want to hear is that the Ford Government needs almost another year to study/consult concerning Justice Cunningham's main recommendation of introducing a competitive new home warranty model that would give Ontarians much needed choice. Since coming into power in June 2018, the Ford Government has already knowingly forced an estimated 40,000 families to purchase a Tarion warranty that is woefully inadequate.

Before the election in June 2018, in Feb. 2018 Premier Ford tweeted the following message:

"Government should not have a monopoly on any business. I can't stand it when politicians think they can run things better than hard working Ontarians."

Now in power, his government, like the Wynne Government did, continues to stall on announcing the termination of Tarion's monopoly and the establishment of a multi-provider warranty model as Justice Cunningham recommended.

The PCs use the slogan "Open For Business". Ending Tarion's monopoly and introducing a competitive model would make Ontario's new home warranty "Open for Business". Similarly, if the Ford Government really is "For the People" as it says it is, it would have moved forward promptly with this key consumer protection measure of ending Tarion's monopoly that Justice Cunningham recommended.

The Ford Government's failure to move forward on ending Tarion's monopoly is also at odds with former PC Critic Jim McDonell responding on behalf of Interim Leader Fedeli before the 2018 election regarding what the PCs would do if elected:

"...Taken at face value, the TARION reform legislation lacked most of Justice Cunningham's recommended consumer protection safeguards, including independent assessment and dispute resolution and a competitive model. The Ontario PC Caucus moved amendments to that effect, and supported the NDP's amendment to institute Auditor-General oversight over the existing TARION structure. We are on the record advocating for more flexibility in the new home warranty market and for greater independence of the dispute adjudication process, and we remain strongly in favour of legislation that would make these changes possible. Our amendments struck a balance by not abolishing the "public" warranty provider outright, but allowing the government to prescribe acceptable alternative plans from licensed insurers..." -- MPP Jim McDonell, Feb. 15, 2018 e-mail

If the Ford Government needs more time to determine the path forward once Tarion's monopoly is ended, it could have announced an orderly wind-down of Tarion today, with related details to be announced in the future -- as the Ford Government did in relation to the Ontario College of Trades (OCOT) on Oct. 23, 2018.

The Ford Government's refusal to commit to an orderly Tarion monopoly wind-down today is disturbing. This is particularly so given the statements by the Premier and MPP McDonnell prior to the election, Justice Cunningham's in-depth study and Tarion Review recommendations, as well as the Ford Government's obvious familiarity with the orderly wind-down process, given the recent OCOT announcement it made less than four months after coming into power.

Before the election, the PCs talked about the need for greater independence of the dispute resolution process, which is also desperately needed. But, sadly, today's announcement is silent on this as well. CPBH's most recent analysis of LAT decisions found that in 2017, only two cases went to the Licence Appeal Tribunal, down from 268 cases in 2006. Consumers have lost confidence in the LAT because, as the statistics show, they almost invariably lose there. More here: <https://tinyurl.com/y96z8ury>

It is also very disappointing that today's announcement does not provide for any claim reconsideration by an independent party for all those homeowners who believe that their claims have been wrongfully dismissed by Tarion. Tarion's most recent publicly available financial statements (Dec. 2017) show that Tarion has amassed - \$275,160,000 - more than a quarter of a billion dollars - in "equity". Many homeowners feel that Tarion has unfairly and inappropriately dismissed their claims. Tragically, far too many of these homeowners continue to suffer in unsafe newly built homes that do not even meet the minimum Ontario Building Code requirements.

A number of the remaining announcements made today attempt to "fix" Tarion, such as changes to disclose Tarion's compensation and moving to a more balanced skills-based board composition. These changes would be unnecessary with a multi-provider warranty model. Why bother with these sorts of changes if the Ontario Government is seriously considering a multi-warranty provider option? Why not focus on making a decision regarding whether or not to end Tarion's monopoly, and then move forward with a comprehensive package once that decision has been made? As far too many Ontarians suffer needlessly in unsafe homes, why is there no urgency on making a decision on whether to end Tarion's monopoly? Why is consumer protection not being given a much higher priority than protecting builders? Numerous attempts have been made by governments over the decades to "fix" Tarion. For example, here is one from 2008 that, while stern, had little to no impact on Tarion or increasing consumer protection in Ontario: <https://tinyurl.com/yycktlth>. Maintaining the Tarion monopoly is not consistent with being Open for Business or protecting consumers. Competition supports both.

As the Ford Government continues to study/consult on the Tarion Review recommendations to abolish the monopoly, it should immediately make the Tarion warranty optional. CPBH has

previously requested this of the Ford Government. No one should be forced to purchase a Tarion warranty when they purchase a newly built home in Ontario. If consumers see value in Tarion's warranty, they will purchase it. Ontarians need – and deserve – choice *now*. It is important to note that most of the rest of Canada enjoys a multi-warranty provider model but, sadly, Ontario continues to fail to provide consumers with the protection inherent in a competitive system. No system is perfect, but competition beats monopoly hands down for consumer protection every time.

CPBH proudly continues to work for properly built homes and consumer protection across Canada. It is the only organization of its kind in Canada. While we are disappointed in today's announcements, CPBH will continue to serve new home owners in crisis and remains ready, willing and able to work with the Ontario Government to better protect Ontarians vis-à-vis the largest purchase most make – a home.

- 30 -

For further information, media may e-mail: info@canadiansforproperlybulthomes.com .

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 has supporters in different parts of Canada, undertakes projects at the municipal, provincial and federal level, and offers a variety of ways for Canadians to get involved. CPBH earned "partner" status with the Canadian Consumer Information Gateway (Industry Canada). Visit www.canadiansforproperlybulthomes.com .

Canadians for Properly Built Homes: Backgrounder, February 2019

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, fire safety, real estate, home renovation, environmental medicine, industrial hygiene, insurance, law, academe, political science and business. CPBH has approximately 40 volunteers in different parts of Canada and earned "partner" status with the Canadian Consumer Information Gateway (Industry 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 to 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.

CPBH has had a number of notable successes. For example, CPBH hears regularly from Canadian consumers that CPBH has helped them, and that its work is important and necessary. CPBH has gained the support of Canada's Heating, Ventilation and Air-Conditioning (HVAC) industry in trying to raise the bar for HVAC in Canada. CPBH representatives have appeared on television, for instance, CTV's W-Five on multiple occasions, as well as a variety of appearances on news broadcasts on CBC, CTV, TVO and radio talk show programs such as Peter Warren's program from Victoria, BC, and Peter Silverman's program in Toronto, ON. 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. A number of

different organizations seek the input from CPBH as government programs are developed. Also, the Office of the Ombudsman of Ontario began to monitor complaints relating to new home ownership after CPBH presented a detailed submission to the Ombudsman in March 2007. This led to the Ombudsman Ontario's report: *"Building Clarity: Investigation into how the Ministry of Government and Consumer Services represents its relationship with the Tarion Warranty Corporation to the public"*. Many have suggested that if it hadn't been for CPBH's efforts over the previous 12 years, the Tarion Review, headed by the Honourable J. Douglas Cunningham Q.C., would never have been called by the Ontario Government in 2015. 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, will not accept donations from builders and relies on donations from consumers to cover its operating costs. Here's how to donate to CPBH: <http://www.canadiansforproperlybuilthomes.com/html/donate/index.html>