



June 9<sup>th</sup>, 2016

J. Douglas Cunningham, Q.C.  
Amicus Chambers Mediation & Arbitration Group  
141 Adelaide St West - #1108  
Toronto, ON M5H 3L5

Dear Justice Cunningham:

## **Re: Ontario New Home Warranties Plan Act and the Tarion Warranty Corporation**

On behalf of the more than 200 members of the Residential Construction Council of Ontario (RESCON), I am writing to express our association's recommendations to improve the current legislative policy framework. I note that unlike other industry associations, our membership exclusively represents low-rise and high-rise residential builders.

While the current legislative structure has many strengths, our members believe that there are also opportunities to improve the system. We therefore welcome your independent review of the *Ontario New Home Warranties Plan Act* and the *Tarion Warranty Corporation* and appreciate your efforts and the ongoing support of the Ontario public service. The feedback below is based on direct consultation with our membership. We hope it helps strengthen your report to the Ontario government.

### **Strengths of Current System:**

The residential building sector is a very important part of our provincial economy. It is estimated that 300,200 Ontarians work in the construction industry, representing more than \$16 billion in wages and an overall investment value of more than \$45 billion. It is also important to consider that homes represent the largest single wealth-builder for most families.

Our industry has benefited from sustained growth for the last 15 years and we are very proud to be one of the best performing sectors in Ontario. This growth has been especially substantial in the greater Toronto area. Because of our skilled labour force and industry innovation, the homes built in Ontario are the best in Canada and among the finest in the world. Moreover, our industry believes that there is tremendous value in the current package of consumer protection and insurance coverage homeowners receive. We are therefore understandably concerned about any changes that would jeopardize the tremendous success of our sector.

### **Customer Perceptions:**

Because of what some in our industry call *the "Mike Homes"* effect, many homeowners falsely believe that poor building practices are prevalent, when the opposite is true. The vast majority of homes built in Ontario are world class and the vast majority of residential builders take tremendous pride in the homes they construct.



The current system creates an unintended and unnecessary adversarial process where anxious consumers contact Tarion without first notifying their builder when they perceive a problem. Indeed, our members have noted that Tarion was intended to be a final point of resolution, but it is now the first point of contact for a consumer that believes that there is a problem with their new home.

Communication with new homeowners is a shared responsibility. Our industry believes that Tarion and builders must work collaboratively to improve the messages to new homeowners to promote confidence, rather than fear, and improve the dialogue between buyers and builders. A healthy dialogue between homeowners and their builders will reduce the current administrative burden placed on Tarion and lead to better outcomes for all parties.

### **Builder Perceptions:**

There is a wide spread perception in our industry that Tarion field representatives apply the home warranty standards inconsistently. We feel that this is an indication that Tarion field representatives may not be sufficiently trained and therefore lack the technical expertise to understand problems and apply the standards in place.

Our member builders have noted that in their interactions with Tarion staff there is often clear pressure exerted by field representatives to settle frivolous or baseless claims because it is seen as easier than explaining to an agitated homeowner why their claim is not eligible. The absence of consistency and the unfair pressure placed on builders needs to be corrected immediately. Better training and a more balanced approach grounded in the current legislation and standards is urgently needed.

### **Complexity & Bureaucracy:**

The nature of the residential building industry and the development of new homes has become more complex and specialized. New technologies have created a more complicated system and our industry feels that this complexity will only rise, in particular because of changes to the Building Code and new climate change requirements.

This added technological complexity necessitates more active communication with builders so that they can be aware of a supplier problem or issues that other builders may be facing. Technological advances and building code changes also necessitate more advanced training for Tarion field agents so they can effectively diagnose problems and apply the standards in a balanced manner.

Tarion's response to the added regulatory and technical complexity in the residential building sector has resulted in an enlarged bureaucracy. Many are now confused as to which department does what. Our industry therefore believes that there are opportunities to simplify Tarion's current administrative structure, eliminate redundancy and improve service delivery to enhance communication with builders, stakeholders and most importantly, consumers.

The development of the "*construction performance guidelines*" is widely seen as a success because it provides greater clarity for builders and manages consumer expectations. This is an excellent example of

how timely and clear information can greatly enhance the outcomes for all parties and reduce the administrative burden placed on Tarion.

In contrast, the delays involved in the development of the “*Builder Bulletins*” have been frustrating. Many in our industry feel that the information Tarion provides to builders often arrives too late in an overly sanitized form. Our industry therefore feels that an enhanced builder and consumer information “alert” system would allow all parties to be aware of emerging issues so that they can respond proactively.

### **Enhanced Conciliation Mechanism:**

The current conciliation process is open to subjective interpretation which often leads to costly delays for all parties. These delays often exacerbate the problem. Our membership believes that more attention needs to be spent on finding faster resolution mechanisms. We believe that enhancing dialogue between homeowners and their builders will lead to better outcomes for all parties.

### **Recommendations:**

1. Our membership believes that enhanced training for Tarion field representatives is urgently needed. Moreover, we believe that these representatives must apply regulatory and insurance standards consistently without placing undue pressure on builders to financially appease frustrated homeowners.
2. We believe that Tarion’s entire communications strategy requires a thoughtful review. Our industry feels that that much more needs to be done to improve the quality and speed of communication with builders and consumers. We believe that changes to the system should promote confidence and understanding among new homeowners, rather than fear and anxiety. The format and content of current communication mechanisms such as the “pre-delivery checklist” often have the unintended consequence of creating an adversarial perception.

An enhanced communication approach should promote dialogue between new homeowners and their builders as the first step to resolving a perceived problem. We believe this will help remove the perception of an adversarial relationship, providing a faster response to consumers and reducing the administrative pressure placed on Tarion.

3. The dual role of Tarion as both a regulator and warranty provider requires further discussion. However, through your report, we hope that you will “open the door” for the government to consider a competitive marketplace for home warranty protection. We believe that home warranty protection should be mandatory for all new homes, but the provision of this service should be open, allowing the homeowner to benefit from a competitive marketplace.
4. We believe consumers and builders would benefit from a new alert system which would allow Tarion to provide more timely information to builders on emerging issues. This would enable builders to be proactive in addressing concerns which have the potential to impact consumers if they are not addressed.



5. Our industry believes that a comprehensive review of Tarion's structure should be undertaken with a view to eliminate redundancy and improve clarity and service delivery for its clients and stakeholders.
6. Tarion's *Board of Directors* is strong, however we believe that there should be greater consideration to the skill sets of the Board members to ensure that the right combination of technical, consumer and industry perspectives are represented.
7. Our industry believes that the current conciliation mechanism is subjective and costly. We are eager to see an evolved system which would allow for a faster resolution for homeowners and builders. This is linked to our desire to see greater dialogue between homeowners and builders as the first step in the resolution process. Avoiding unnecessary litigation and appeals to the *License Appeal Tribunal (LAT)* is beneficial to all parties.
8. Builders have legal obligations to Tarion, homebuyers and their labour partners. The recent labour disruptions have exposed the need for greater discussion between Tarion and the residential development industry to ensure that the impact on consumers caused by unforeseen work stoppages are managed with a balanced and informed approach.

Purchasing a new home is a big decision and we feel that the system should continue to promote confidence and security for homeowners. Our membership welcomes your questions, comments and ideas. We would be pleased to meet with you to discuss these recommendations in greater detail. Please contact my colleague Anthony Fernando to coordinate the next steps. He can be reached by email: [fernando@rescon.com](mailto:fernando@rescon.com) and by telephone: 905-760-7777 (x 112). Thank you for your consideration.

Sincerely,

Richard Lyall  
President, RESCON

CC:

Hon. David Oraziotti, Minister of Government and Consumer Services  
Mr. Glen Padassery, Ministry of Government and Consumer Services