



## TARION OMBUDSPERSON OFFICE

2009 Annual Report

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# ANNUAL REPORT MESSAGE



The Ombudsperson is a resource in cases where a homeowner feels that they were not treated fairly.

## What is an Ombudsperson?

The role of an Ombudsman in government was first established in Sweden in 1809 to balance the interests of the citizens against the authority of the king. Over the following two centuries the Ombudsman concept was adapted by governments throughout the world. More recent years have seen it expand into the public and private sectors. Although their environment may differ most Ombudsman Offices, including the Tarion Ombudsperson, share similar characteristics. They are independent, accessible, confidential, impartial and informal. Although it is an internal department, reporting to the President and CEO as well as the Board of Directors, the Ombudsperson Office at Tarion operates independently of all other departments.

While the first Swedish Ombudsman focused on the relationship between the king and his citizens, the Tarion Ombudsperson promotes and protects fairness for homeowners in their interactions with Tarion. The office receives complaints from homeowners about Tarion policies or practices and seeks to resolve these concerns. It also serves as a source of education and referral and may offer recommendations about how to make things right. In some cases the Ombudsperson may also make recommendations to management about systemic issues. More information about the mandate for the office can be found at: [www.tarion.com](http://www.tarion.com)

## Why did Tarion create an Ombudsperson?

The Tarion Ombudsperson provides an objective perspective to look at consumer concerns. The role of the Ombudsperson is not to rehear a decision, but to ensure that the process used to make the decision was fair, and rectify it if it was not. The Ombudsperson adds credibility to Tarion's processes because consumers have a

venue in which to air concerns and a mechanism to address unfair treatment. The vast majority of homeowners do not have a need to contact the Ombudsperson; however, the Ombudsperson is a resource in cases where homeowners feel that they were not treated fairly.

The Ombudsperson Office is a department within Tarion. Housing the department internally provides advantages in both resolving complaints and in developing recommendations. Close proximity allows the Ombudsperson to provide a quick response when complaints are made. In addition, staff in the Ombudsperson Office are familiar with Tarion's policies and processes, which enables them to easily identify errors or omissions and effectively resolve complaints. The Ombudsperson is also able to make recommendations that respond to the circumstances of a complaint, while understanding the context in which the recommendations are made. This proximity allows the Ombudsperson to fulfill its mandate in an effective and efficient manner.

## Priorities in 2009 and 2010

The New Home Buyer Ombudsperson Office was established in the fall of 2008. This first annual report discusses the activities of the office in 2009. During 2009, the terms of reference for the office and the policies and procedures used to resolve complaints were established. In 2009, the Office received 271 complaints and inquiries, and achieved significant results in resolving these concerns.

During its first year of operation, the focus of the Ombudsperson Office was to put in place the policies and structures which would allow it to function. In 2010, the priority will be to

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implement a new software system to support the case management process. The office will also look to implement an ongoing user survey, and strive to continue to improve our service to people who interact with us.

## **Outreach and Collaboration**

Outreach and collaboration are important aspects of the work of the Ombudsperson. These activities help to fulfill the educational component of the Ombudsperson mandate. Much of the outreach work in 2009 related to discussing the establishment of the office and the mandate of the Ombudsperson. These activities included: creating a presence and source of information about the Ombudsperson Office on the Tarion website; presenting the Ombudsperson mandate to attendees at the first Tarion Annual Public Meeting; and, educating Tarion staff about the office and its processes. Representatives of the Ombudsperson Office also participated in a presentation at the Canadian Condominium Institute Conference.

I am active within the Forum of Canadian Ombudsmen (FCO), and was elected as FCO President in 2009. I delivered a workshop at the 2009 joint conference of the Association of Canadian College and University Ombudspersons, the FCO and the International Ombudsman Association. In November, I was invited to attend two international Ombudsman conferences in Brazil to discuss the role and function of Canadian Ombudsmen. These activities are important because they raise the profile of the Tarion Ombudsperson Office, and present opportunities to learn about the challenges and successes of Ombudsman offices around the world.

## **Thanks**

The Ombudsperson Office has been able to achieve its successes this year by working with all of the departments within Tarion. I would like

to extend my thanks to all the Tarion employees which the Ombudsperson Office has interacted with this year. Fair solutions have been found as a result of their professionalism, collaboration and commitment to service. I look forward to continuing to work together.



Ian Darling,  
January 2010.

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# OMBUDSMAN OPERATIONS

## How the Ombudsperson Office works

The Ombudsperson receives complaints from homeowners, but deals with many different stakeholders – homeowners, Tarion employees, and builders. In doing so we pledge to treat all who deal with our office with dignity and respect. In dealing with the Ombudsperson Office we treat people fairly by:

- **Listening to all sides of the story**
- **Ensuring we understand the perspectives of the people we serve**
- **Considering all the evidence available**
- **Giving reasons for our decisions**

When the Ombudsperson Office receives a complaint, it communicates with the homeowner to understand the concerns, and obtain permission to look into the concerns. Staff in the office assesses the complaint to see if efforts have been made to resolve the problem, and provide advice and guidance to assist homeowners in resolving their concerns. If the complaint is outside its jurisdiction, the Ombudsperson Office will provide information to assist in resolving the concerns.

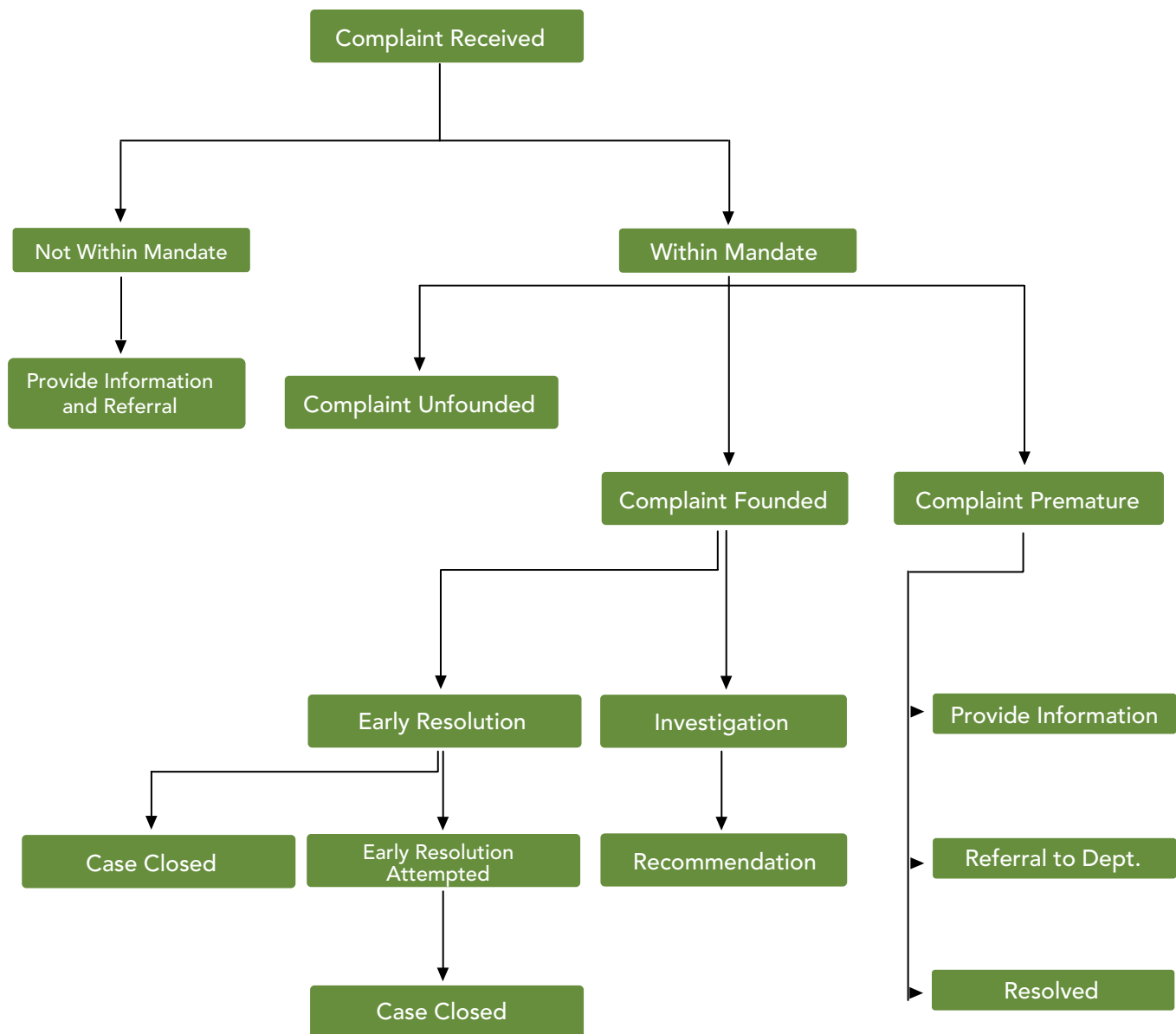
In cases where Tarion has attempted to resolve a complaint, the Ombudsperson Office will examine the complaint to review if the homeowner has been treated fairly. The Ombudsperson Office will look for opportunities to resolve the case informally by using a variety of conflict resolution techniques. In some cases, the Ombudsperson may choose to investigate the complaint, and issue recommendations to ensure a fair resolution.

The Ombudsperson Office strives to be responsive and timely in its work. The office has established service benchmarks. When homeowners contact the office, we strive to respond within 24 hours of the initial contact. Case reviews are to be completed within five working days of when we receive permission to access the case. Early resolution and investigation can take longer to complete, depending on the circumstances of the case. We strive to complete early resolution within two weeks of receipt of the complaint. Investigation can take up to 90 days, depending on the circumstances of the case. The Ombudsperson Office makes it a priority to keep complainants apprised of the status of their complaints.

There are limits to the mandate of the Ombudsperson Office. The office does not deal with complaints outside of the warranty plan (the *Ontario New Home Warranties Plan Act*), concerns about employee impropriety, or privacy concerns.



# Our Process





## Fairness

The Ombudsperson Office promotes and protects fairness. In order to determine if a complainant has been treated fairly, the office applies a series of questions related to communication, decision-making, and fair processes as a guide to determine fair treatment. The following list is not exhaustive, but provides examples of the criteria which are applied in these circumstances.

### Communication:

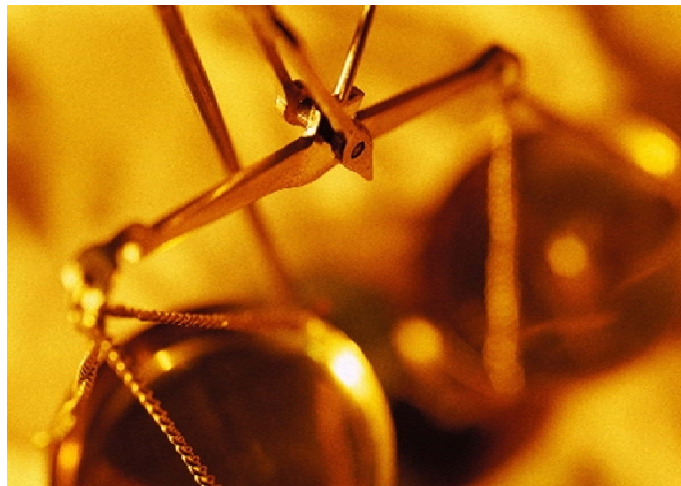
- Is public information available and understandable?
- Are the rules upon which the decision was based clear and available?
- Do clients receive all of the information they need?
- Are deadlines for applications or programs provided and published widely?
- Were complaints treated with respect in dealing with their concerns?

### Is decision reasonable? The Ombudsperson would assess if:

- The decision is unreasonable.
- The decision is inconsistent with other decisions made in similar circumstances.
- The decision cannot be rationally explained.
- The effect of the decision is contrary to what was intended.
- The effect of the desired resolution of the complainant could cause unreasonableness for others.

### Oppressive?

- Does the decision impose inordinate and unnecessary obligations on one party?



### Unjust?

- Is the decision unjust?
- Is it arbitrary or does the effect of the decision impose inordinate or unnecessary obligations?

### Mistake of fact, or Wrong?

- Was decision based on wrong facts?
- Was all relevant information considered in making the decision?
- Was the decision wrong based on the evidence available?

### Fair Process?

- Is adequate notice provided to those persons who may be affected by a decision?
- Are those affected by a decision given a chance to give information and evidence to support their position?
- Are decisions made within a reasonable time?
- Are meaningful reasons given for decisions?
- Are the decision-makers unbiased?
- Is the public aware from the beginning how the final decision will be made?

**If mistakes occur, are they addressed in a timely and respectful manner?**

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## What type of recommendations can the Ombudsperson make?

When the Ombudsperson finds that a complaint has been substantiated, the office works with the appropriate Tarion department to determine a fair solution. In some cases, it is appropriate to make a recommendation. There are several types of recommendations, including:

- *Actions directed toward the individual complaint.* Examples include recommendations to improve communication related to an individual case, to provide reasons for a decision, or to improve service.
- *Review of actions or decisions.* Examples include recommendations to reduce a delay, to suspend or postpone an action, or to reconsider or change a decision.
- *Apologies.* These are directed toward acknowledging the hurt and frustration caused when people are wronged.
- *Change policy or practice.* These recommendations are directed toward addressing systemic concerns.



When the Ombudsperson makes recommendations, they can include one or all of the means of redress, depending on the circumstances. The Ombudsperson attempts to ensure the remedy is proportional to the problem that needs to be addressed.



# THE YEAR IN REVIEW

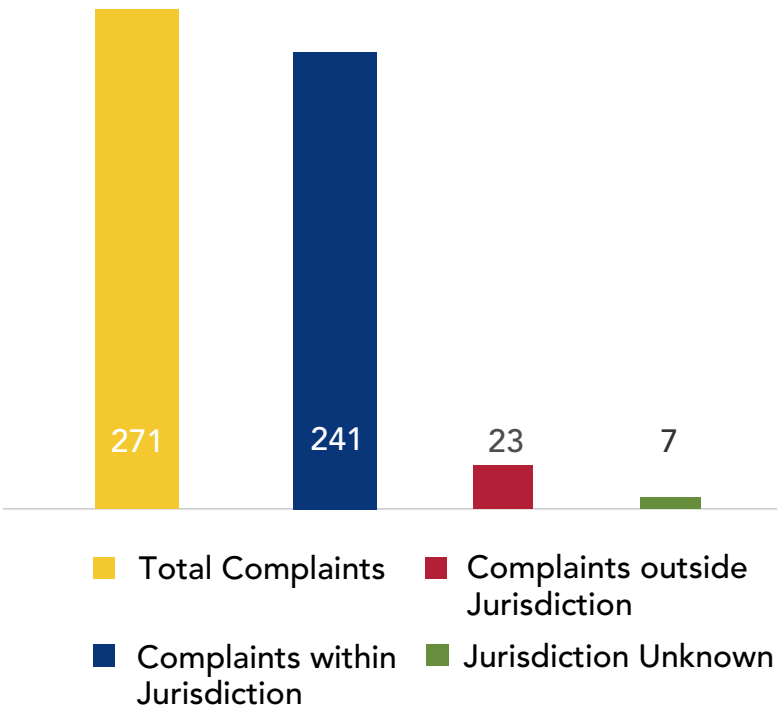
This section provides a brief statistical summary of the year. The statistics are

current to January 15, 2010.

## Jurisdiction

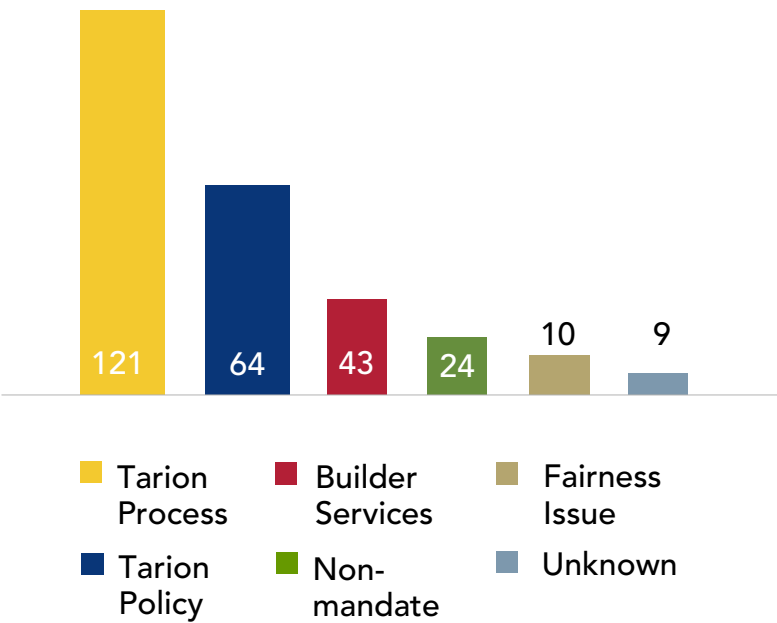
The Ombudsperson Office received 271 complaints and inquiries in 2009. Of these, 241 fell within the jurisdiction of the office (as outlined in the Terms of Reference which can be found on [www.tarion.com](http://www.tarion.com)).

The majority of complaints that were outside the jurisdiction of the Ombudsperson Office were related to Tarion, but they were excluded from our mandate – complaints from builders, for example.



## Types of Complaints

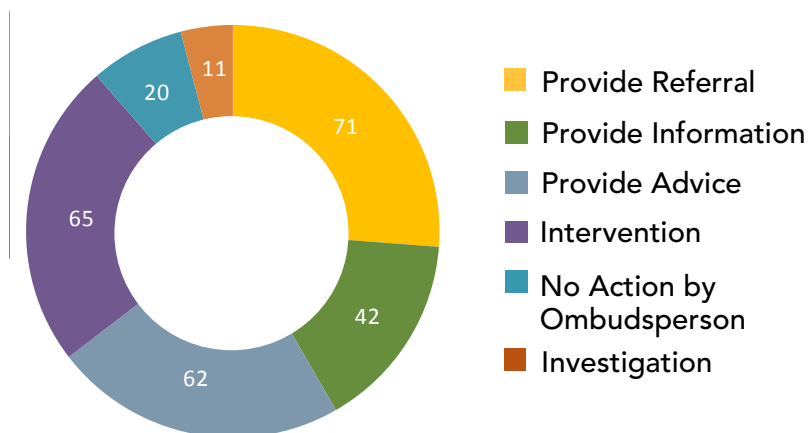
When the Ombudsperson Office receives a complaint or inquiry, it assesses the complaint, and tracks the basis of the issue in the complaint. This chart provides a sense of which issues are the basis of the complaints.



## THE YEAR IN REVIEW (cont'd)

### Action Taken

Action refers to how the Ombudsperson dealt with the complaint. This chart demonstrates how the Ombudsperson works to resolve concerns in the most informal manner. It also shows the important role the Ombudsperson Office plays in informally resolving complaints.



### Resolution Status

#### Phases of Ombudsperson Process:

This table shows how the Ombudsperson resolved cases. It also demonstrates where the complaint was resolved in the Ombudsperson complaint process. The Ombudsperson can make recommendations to rectify the circumstances of an individual complaint or address systemic concerns.

During 2009, the Ombudsperson made 25 recommendations regarding individual complaints. The first systemic recommendations are contained within this report.

Intake	# of Cases
<b>Action:</b>	
Referral - Premature	57
Abandoned by Complainant	29
Referral/Information - Complaint out of jurisdiction	18
Information - Premature	14
Referral/Information Complaint Unfounded	5
Ombudsperson Office withdrew	5
In Litigation	0
Under Appeal	0
<b>Early Resolution</b>	
<b>Action:</b>	
Advice to Complainant	47
Review - Unfounded	35
Facilitated Solution	22
Review and Recommendation	20
Early Resolution	5
Compromised Solution	3
<b>Investigation</b>	
<b>Action</b>	
Investigation - Unfounded	6
Investigation and Recommendation	5
Total	271

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# CASE STUDIES

The Ombudsperson also reports on case activity. This helps ensure that the office is account-

able and provides an opportunity to learn from the complaints the Ombudsperson receives.

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## Case #1: Common element concern: "Where do I start?"

A property manager contacted the Ombudsperson Office to complain that the condominium corporation she was representing had been denied the opportunity for a conciliation inspection. In speaking with the property manager, it was clear that she had not discussed her concerns with a manager within the Claims Department. The property manager was put in contact with the manager who deals specifically with common element claims and the complaint was resolved at that level.



## Case #2: Allegations of mistreatment

A homeowner approached the Ombudsperson Office to complain about the treatment he received from a Tarion Field Claim Representative (FCR) in the course of resolving a warranty claim for deficiencies indicated on his 30-Day Form. The homeowner expressed concern with the process used to settle the warranty claim; unnecessary delays; the amount of the financial settlement received; and, rude treatment by the FCR.

The homeowner also disagreed with Tarion's assessment of the defects listed on his Year-End Form. The builder had been deemed unwilling and unable to complete the repairs, so the homeowner was dealing directly with Tarion to address any warranted deficiencies.

The Ombudsperson investigated these concerns and found that although the case did take a long time to resolve, the amount of time taken was appropriate due to the complex nature of the defects in the home. Although the time to resolve the claim was not determined to be unfair, the Ombudsperson found that Tarion did not communicate effectively to the homeowner regarding the delays. This contributed to the homeowner feeling mistreated.

The Ombudsperson also reviewed the process used to determine the warranty claim settlement and found that the final settlement amount was fair and appropriate based on independent quotes. However, Tarion agreed to re-examine the homeowner's expenses to ensure that the settlement was indeed appropriate. The Ombudsperson requested a re-inspection of certain non-warranted items from the year-end inspection. These items were later found to be warranted, and Tarion undertook to complete the repairs. The Ombudsperson found that the FCR had been rude in making unnecessary comments to the homeowner and recommended that Tarion apologize to the homeowner for the comments.

In this case the amount of the settlement and time to complete the process were found to be appropriate; however, Tarion was not without fault. The intervention of the Ombudsperson provided the homeowner with an independent review of the circumstances and recommended appropriate measures to redress the wrongs.

### Case #3: Repeated requests for inspection

A homeowner contacted the Ombudsperson Office to express his dissatisfaction with Tarion. He complained about how previous warranty claims were handled and about ongoing problems with his house. He stated that he had sent a letter of complaint to Tarion two months earlier, but he had not received a response. He stated that he wanted an inspection of the concerns that he raised on his Second-Year Form, which remained unresolved. The Ombudsperson Office looked into his file and found that the homeowner had sent a letter of complaint to Tarion. The letter touched on a wide variety of subjects; however, the homeowner had specifically requested a conciliation inspection of items that had not been repaired. The letter was received within the appropriate timeframe for requests for inspection. Tarion had received the letter and added it to the homeowner's file, but had not scheduled the inspection.

After reviewing the file, the Ombudsperson made two recommendations. The first was that the inspection be booked as soon as practical. The second was that the appropriate department should respond to the concerns raised in the complaint letter. The Ombudsperson advised the complainant that the inspection would be scheduled and invited the homeowner to contact the office if they were dissatisfied with Tarion's response to their complaint. As a result of this intervention, the homeowner was not disadvantaged by Tarion's error regarding the processing of the correspondence.

### Case #4: Whiter shade of beige

An elderly homeowner contacted the Ombudsperson shortly after moving into her new condo. She was upset that her builder had installed the wrong colour tiles for her main bathroom shower surround. The installed tiles were beige but according to the homeowner, she had specifically chosen and paid for white tiles.

The homeowner reported that when she conducted her Pre-Delivery Inspection, the builder agreed that an error had been made and promised to remove and replace the tiles. The builder later reversed this decision and refused to replace the tiles. The homeowner scheduled a conciliation inspection, but then contacted Tarion by phone to find out if anything was likely to be done regarding her tiles. She was originally told that Tarion would not be able to assist with this issue, so she cancelled her inspection.



On review of the documentation submitted to the Ombudsperson, it was clear from the colour selection chart that the homeowner had selected and paid for the white tiles. The Ombudsperson Office contacted the Claims Department to discuss the concerns. The Claims Department advised that it was likely this item would be warranted due to the very explicit information about the colour of the tiles on her colour selection chart. The Ombudsperson Office also met with Tarion's Customer Services Department to discuss reinstating the homeowner's conciliation. The inspection was rescheduled, but the builder replaced the tiles prior to the inspection date. The homeowner contacted the Ombudsperson Office to express her satisfaction with the resolution.

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## Case #5: All the available evidence

The Ombudsperson received a telephone call from a 70-year-old, partially disabled war veteran. He had purchased what he described as his “final home” with his wife a little less than two years prior. The homeowner contracted with the builder to install a unique plumbing system. Shortly after the system was installed, the homeowner began to suspect that it was not installed properly and its performance was being affected as a result. He called Tarion and was advised that it would be up to him to prove that the system was deficient. It was suggested that he have a home inspector or plumbing specialist assess the issue. He took this advice and spent several hundred dollars to have the issue assessed. His suspicions were confirmed; his inspector reported that the system was not installed properly and needed major repairs, or even replacement. He submitted the report along with a Second-Year Form. When his builder was unable to resolve his concerns, he requested an inspection.

The homeowner felt it was clear that the Field Claim Representative (FCR) had not read the report before the inspection. The homeowner reported that when he asked the FCR about the report, the FCR indicated that he had not read it and had no intention of incorporating the report into the warranty assessment. The inspection was completed; the report from the Tarion FCR warranted no items and the homeowner lost his inspection fee.

The Ombudsperson Office was concerned that it appeared the Tarion Warranty Assessment Report had been produced without considering all relevant information and evidence. The office was also concerned that the homeowner was advised by Tarion to substantiate the claim, only to have the evidence ignored. The office recommended that a re-inspection take place with an FCR who was familiar with plumbing systems, and that a plumbing specialist should also attend to properly assess the system.

The recommendations were accepted and the re-inspection took place. Major defects in the system were identified and the attending plumbing specialist was asked to provide quotations for a complete replacement of the system. The homeowner was provided with a cash settlement for the repairs and had his inspection fee refunded.



## Case #6: Why did they accept the builder's expert report but not mine?

A homeowner contacted the Ombudsperson Office to dispute a decision related to an alleged Major Structural Defect (MSD). The homeowner stated that the basement of her five-year-old house was leaking. The water penetration warranty on the house had expired and the homeowner would be responsible for the cost of the repairs if the problem was not an MSD. Tarion had conducted an inspection and determined that the crack was not an MSD. The homeowner disagreed with the assessment and hired a structural engineer to provide an independent assessment and report.

The homeowner said she had provided an engineer's report to Tarion, stating that a crack in her foundation constituted an MSD. The homeowner further explained that the builder had



also provided a report suggesting there was a crack, but it was not an MSD. The homeowner reported that Tarion had chosen to accept the builder's report over the one she had supplied. She stated that she did not know why Tarion accepted the builder's report over her own. She had contacted the Field Claim Manager (FCM), but had not received a satisfactory response as to why Tarion preferred one report over the other. She requested that Tarion hire a third engineer to provide an independent report.



The Ombudsperson contacted the FCM to discuss the reports and the request for an independent assessment. The FCM stated that both reports indicated that there was a crack and that the crack leaked. The reports differed as to the cause of the crack, but both reports recommended that the crack be repaired by epoxy injection. A defect which affects the purchaser's ability to use the building as a home could be considered an MSD according to the *Ontario New Home Warranties Plan Act*.

In the FCM's experience, epoxy injections were only suitable for minor repairs, and although the engineers differed on their assessment of the cause, the method of repair was the same. The Ombudsperson found this rationale compelling and asked whether it had been conveyed to the homeowner. As it had not, the Ombudsperson recommended the FCM provide the homeowner with the reasons for Tarion's decision.

The FCM contacted the homeowner and explained the decision. And while the homeowner was disappointed that the repair would not be covered under the warranty, she now understood the reasons for the decision and accepted that the assessment was fair.

### **Case #7: "How do I know it's a fair offer?"**

A homeowner contacted the Ombudsperson Office to request assistance in resolving a complaint related to a settlement offer she received from Tarion. Tarion had found a warranted deficiency with the hardwood floors, but the builder had failed to make a satisfactory repair. Tarion had then decided to provide a cash settlement in order to address the deficiencies.

The Field Claim Representative (FCR) prepared an estimate of the repair costs and made a settlement offer. The homeowner had no way to assess whether the settlement was fair, so the FCR suggested she obtain an independent quote to do the work. The homeowner agreed and asked for a description of the scope of work in order to ensure the quotes were based on the same understanding of the problem and proposed repair. The FCR refused to provide the scope of work, explaining that it was an internal Tarion document and was therefore confidential.

The Ombudsperson Office concluded that this was unfair because Tarion was not providing the homeowner with sufficient information in order to be able to make an assessment of the settlement offer. In discussing the complaint with the Claims Department, it was apparent that the settlement offer was reasonable based on the scope of work; however, Tarion had not provided enough information to the homeowner for her to make that assessment. It was recommended that the FCR share the scope of work and rationale for the settlement offer with the homeowner. This recommendation was accepted. The homeowner reviewed the information and accepted the settlement offer.



## Case #8: Preventing date of possession dispute

The Ombudsperson Office received a complaint from a homeowner at the end of the first year he was in his home. The letter outlined a series of complaints with his builder's service. The complaint was received five days after the end of the one year warranty period. The homeowner had not submitted a 30-Day, or Year-End Form. On first look, it appeared that the homeowner was too late to submit his Year-End Form.

In reviewing the facts of the complaint, the Ombudsperson Office noticed a difference between the day that the homeowner stated that he moved into the house and the date of possession which Tarion had on file. The date on record was seven days earlier than the date indicated by the homeowner. The Ombudsperson Office deemed this difference significant because the complaint was received after the one year warranty had expired according to the date on file. However, if the homeowner's date was accurate, he would still have had two days before the end of the one year warranty period in which to file warranty claims.

The Ombudsperson Office requested that a search be performed to confirm the date of possession. The result confirmed that the date supplied by the homeowner was indeed correct. Tarion adjusted the dates on file and the resulting deadlines. The Ombudsperson Office contacted the homeowner and informed him that he had 48 hours before the year-end deadline in

which to submit his Year-End Form. The homeowner replied that he did not know about the deadline and would be sure to submit his form right away. He thanked the office, submitted the form, and had his warranty concerns addressed through the claims process.

## Case #9: Warranty claim from house constructed by illegal builder—cooperation and resistance

A retired homeowner contacted the Ombudsperson Office after receiving a Warranty Assessment Report from a conciliation inspection. He was extremely upset because many of the items that had been inspected were not warranted, but he felt it was obvious they should be covered. He mentioned the hardship he had endured at having an illegal builder. He stated that he was upset and offended that he was asked to assist Tarion by testifying against the builder at the illegal building trial, but he was still being treated unfairly.

The Ombudsperson reviewed the Warranty Assessment Report, felt that many of the criticisms were compelling, and that apparent errors were unfair to the homeowner. The Ombudsperson does not make warranty decisions, but felt that the concerns deserved a second opinion. The Ombudsperson recommended that a Field Claim Representative conduct a review to determine whether a reassessment would be appropriate. The Claims Department agreed and a re-inspection was set up to assess the items that had not been warranted.



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Following the re-inspection, several items were reassessed as warranted. The homeowner was also provided with information about how to make a delayed closing claim. The decision regarding items originally deemed not warranted was reversed and Tarion helped negotiate a settlement between the homeowner and the builder to resolve all the outstanding deficiencies in the home.

### **Case #10: Please disregard this form letter**

A homeowner contacted the Ombudsperson Office to complain that Tarion had arbitrarily changed an agreement. The homeowner indicated that there was a problem with the installation of the roof shingles and an inspection was scheduled for the middle of the winter. The roof was covered with snow on the day of the inspection. The Field Claim Representative (FCR) indicated that the inspection could not take place, and that the homeowners could re-schedule it in the spring. The homeowner was told that the conciliation fee would be refunded.

A week later the homeowner received a letter from Tarion indicating that the defect would not be warranted and the conciliation fee would not be refunded. The homeowner was angry because the letter appeared to contradict what the FCR had said. The fact that the item was not warranted given that it had never been assessed was also upsetting.

When the Ombudsperson Office reviewed the case, it was clear that the homeowner had received a form letter which had been automatically generated following the conciliation. The letter was not relevant to the circumstances of the case; however, it had not been suppressed and replaced with an appropriate substitute. The Ombudsperson Office contacted the Claims Department to request that an additional letter be sent to the homeowner to reiterate the message that the FCR had originally provided and address the issues raised in the form letter.

The Claims Department sent a new letter. When the homeowner called to re-schedule the appointment in the spring, the defect was found to be warranted.

While this case was easy to resolve, it is symptomatic of several complaints we received regarding inaccurate or contradictory form letters from Tarion. While these are the product of simple errors or omissions, they reduce the credibility of the organization. It is the hope of the Ombudsperson Office that greater care will be taken in order to reduce the frequency of these incorrect or contradictory letters.



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# RECOMMENDATIONS

The mandate for the Ombudsperson includes resolving individual complaints, as well as addressing systemic issues. In this context, a recommendation is considered systemic when a number of homeowners are affected by a

Tarion process, and the concerns do not relate to an individual decision or action. These recommendations are based on themes identified in resolving complaints throughout 2009.

## 1. Documentation of communication with Technical Desk

When homeowners call Tarion with technical questions related to their home and its warranty coverage, they are referred by the Customer Centre to the Technical Desk. This service is designed to provide additional technical information and advice regarding warranty coverage. These questions often relate to perceived defects in the home and whether they would be covered under warranty.

Several of the complaints which the Ombudsperson Office dealt with related to information provided by the Technical Desk. Representatives from the Technical Desk do not consistently make notes in homeowners' electronic file regarding these conversations. In discussions with Tarion management, it is clear that the purpose of the Technical Desk is to act as an informal resource. It is not clear that homeowners have the same expectation.

In this case, the ideal practice would be for Technical Desk Representatives to make notes of the conversations in an electronic file; however, the volume of calls received by the Technical Desk does not make that practical. Therefore, the Ombudsperson recommends that Tarion clarify and communicate to users of the service the role and purpose of the Technical Desk.

## 2. Late Statutory Warranty Forms and requests for inspection

The most common complaints received by the Ombudsperson Office relate to the late submission of warranty forms, or requests for inspections that occurred outside of the timeframes established by Tarion. When homeowners submit forms after a deadline, they receive a letter indicating that the form has been rejected as too late. However, in some cases if they question that decision they are informed that they can complain to the Vice President of Customer Services if they feel that there are exceptional circumstances that would justify the form's acceptance.

This is unfair because homeowners are only informed of the complaint process if they specifically ask. The homeowners are not told which circumstance would warrant acceptance of a late form submission. There are no set timelines for responses from Tarion, and no requirement for Tarion to provide reasons for the decision. In discussion with Tarion officials about this practice, I was told that the existence of the process was not made explicit in order to remain informal and responsive to customer needs. While the goal of creating an informal mechanism to address these concerns is laudable, it has created an unfair situation.

Therefore, the Ombudsperson recommends:

1. that the complaint process for exemptions to late form submission and late requests for inspections be formalized and made public;
2. that the criteria as to what constitutes an exceptional circumstance be clarified along with the fact that Tarion may require documentation to support a claim of exceptional circumstances;
3. that the complaint process has a specific timeframe for responses and a requirement that Tarion provide reasons for its decisions;
4. that decisions are made in consultation with both Claims and Licensing and Underwriting given that builders are often consulted for their opinions or consent to accept late forms or exceptional requests.

### 3. Improved training and communication related to identifying and reporting concerns about builder honesty and integrity

Throughout the year the Ombudsperson Office received a number of complaints where homeowners expressed concern with an individual builder's behaviour. Sometimes these concerns were secondary to the concerns about their warranty. In other cases they were about builder honesty and integrity. Where appropriate, the Ombudsperson Office forwards the relevant information to the Licensing and Underwriting Department. The Licensing and Underwriting Department is responsible for regulating builders. It also considers builder honesty and integrity when renewing builder licenses. In reviewing

these concerns, it is not always apparent that the relevant information related to builder conduct is available for consideration. The Claims Department and Customer Centre have the most direct contact with homeowners and the potential to hear about or observe inappropriate builder behaviour. These observations should be made available for the Licensing and Underwriting Department to consider. This apparent gap in communication means that Licensing and Underwriting may not have all the relevant information when considering licensing decisions, or when considering revoking builder licenses.

The Ombudsperson Office recommends that training be provided by Licensing and Underwriting to the other operational departments regarding individual builder conduct. This training should discuss what would constitute a concern regarding builder honesty or integrity and how to document and report inappropriate conduct. It is also important that this training be incorporated into new employee orientation.

### 4. Third Party Reports

The Ombudsperson Office has identified a concern with how third party reports, which are provided by homeowners, are handled by Tarion. The Ombudsperson has a particular concern with reports that are provided by homeowners in cases where a homeowner disagrees with a Tarion Warranty Assessment Report. Examples would include: engineer's reports, manufacturers' reports, or any other industry expert report. The Ombudsperson Office is concerned with lack of fairness in relation to how these reports are handled because of a lack of consistency within the Claims Department.



From a sampling of Ombudsperson cases where third party reports have been provided, the Ombudsperson recommends that the following best practices be adopted by the Claims Department:

1. Warranty Assessment Reports, or any reassessments, should address the information provided in the report.
2. If Tarion does not accept the validity of the report, reasons should be provided as to why the report has been deemed insufficient to substantiate a defect.
3. If a report is not accepted, and a Decision Letter is requested, the Decision Letter should make reference to why the report was not accepted if it is material to the dispute, rather than reiterating the initial warranty assessment.

## 5. Fair Settlement Offers

In cases where a defect has been warranted, but the builder fails to repair the problem, Tarion will work directly with a homeowner to resolve the concern. In some cases this means that Tarion will hire a contractor to complete the repairs. In others, Tarion will provide a cash settlement to allow the homeowner to make the repair. The Ombudsperson has identified a concern with inconsistent practices related to settlement offers.

The Claims Department confirmed that a scope of work is developed as part of the process of developing settlement offers. They are necessary as a component of identifying what work needs to be done, and form the basis of the contractual relationship between Tarion and contractors hired to complete repairs.

The training document that describes the purpose and process to develop a scope of work indicates that it should have enough detail that a homeowner could understand how a settlement offer is derived.

In examining the Ombudsperson complaints about the settlement process, it is clear that there are inconsistent practices related to the creation of a scope of work. In reviewing the scope of work training module, the content focuses on the Tarion/contractor relationship rather than the actual purpose of the document, which is to provide information to the homeowner. In cases where the relationship with a homeowner is mentioned, the focus is on ensuring the homeowner understands the extent of Tarion's responsibility related to the repair.

There does not appear to be a consistent practice regarding how a scope of work is made available to homeowners. In some cases it is automatically provided, whereas in other cases, it is provided only at the homeowner's request.

In several cases, homeowners reported that they felt pressured to accept settlement offers without knowing the basis for the quote. They further reported that when they were advised to get their own quotes to complete the repair, Tarion did not provide a scope of work. This made it impossible to get an accurate quote for the work. These circumstances create the perception of unfairness for homeowners, and are not consistent with the expectations outlined in the scope of work training module.

In cases where the Ombudsperson looked into concerns that stem from allegations of unfair quotes, it was found that the settlement offers were fair, but that the way the settlement

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negotiations were handled created the impression of unfairness.

Tarion strives to provide accurate, transparent and defensible settlement offers. In order to treat homeowners fairly in providing quotes, the Ombudsperson recommends:

1. the claims process operate in a manner that is consistent with the expectations outlined in the scope of work training module, which indicates that Tarion should provide the rationale for all settlement offers and share the scope of work so that a homeowner can make an accurate comparison between Tarion and third party contractors;
2. that the rationale and breakdown of components in a settlement offer be provided to homeowners in all cases where Tarion is making a cash settlement – not only when homeowners request it;
3. that the scope of work training module is updated to include an enhanced focus on the relationship between Tarion and the homeowner, to ensure fairness and transparency in negotiating settlements of warranty claims; and,
4. that training conducted by the Claims Department should continue to include how to make an accurate settlement offer, and should incorporate how to demonstrate that the quote is fair.



# MANAGEMENT RESPONSE



As the administrator of the *Ontario New Home Warranties Plan Act*, we believe we should be held to a high standard with respect to public accountability.

It is part of the mandate of the Ombudsperson Office to identify complaint trends and systemic issues and to recommend improvements. On behalf of the Board of Directors, Tarion management would like to express its appreciation for this opportunity to respond to the recommendations made in the 2009 Ombudsperson Annual Report.

## 1. Documentation of Communication with Technical Desk

The purpose of the Technical Desk is to allow stakeholders, including homeowners, builders, and their advisors to have access to interpretations of the building code, and construction performance guidelines on a gratuitous basis. This service was created to provide advice and guidance. Information can be obtained on an anonymous basis so that stakeholders who are dealing with Tarion on specific matters avoid prejudicing their active cases.

Advice from the Technical Desk is generally explanatory in nature to give the stakeholder context in evaluating their claims and potential method of repair. It is not intended as the final word on a course of action for a stakeholder regarding a repair or resolution of a claim.

Rather than formalizing Technical Desk interactions with stakeholders, management proposes to maintain the current process. To address the Ombudsperson's concern, Tarion will communicate a clear disclaimer to stakeholders that ensures that they understand interpretations or advice provided by the Technical Desk does not bind either Tarion or the stakeholder, and is for information purposes only. This avoids the need for Technical Desk staff to record formal notes of discussions. They will be instructed not

to enter formal notes, except in exceptional circumstances as determined by their manager.

## 2. Late Statutory Warranty Forms and Requests for Inspection

Homeowners who are unhappy with the treatment they receive from Tarion have the right to make their concerns known to the Vice President, Customer Service.

The process for complaining about poor treatment is available on the Tarion website. When the Vice President, Customer Service hears complaints, she may find them to be either well-founded or without merit and take appropriate action based on the criteria of fairness or hardship to either the homeowner or builder involved in the case. If the homeowner disagrees with the disposition of the complaint, he or she will be referred to the Ombudsperson.

Contact Centre Representatives will be trained to inform homeowners of the complaints process. Tarion correspondence will also include a reference to the complaints process for homeowners.

## 3. Training/Communication re: Reporting on Builder Honesty and Integrity Issues

Such training will be developed and communicated to all operational departments prior to the end of 2010.

## 4. Third Party Reports

Management acknowledges the importance of fairness and transparency in the handling of third-party reports. Claims staff are expected to, and do, consider third-party reports, when

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provided. In recognition of the Ombudsperson's concern regarding consistency, the Claims Department will review its policies, training, and expectations to ensure that commitment is reflected in its practices. Changes to written policies and procedures will be considered and developed over the course of 2010 and finalized and reported in 2011.

## **5. Fair Settlement Offers**

The Claims Department will comply with terms of the "Scope of Work" module obligations, including providing stakeholders with the rationale for all settlement offers and share the scope of work, so that stakeholders can make accurate comparisons between Tarion's offer and third-party contractor quotes.

The Claims Department will review its "Scope of Work" module and consider the extent to which it may be modified to permit additional transparency to stakeholders. Changes to the "Scope of Work" module will be considered and developed over the course of 2010 and finalized and reported in 2011.

Management would like to thank the Ombudsperson Office for its work on behalf of Tarion this past year and for the collegial way in which this work has been undertaken. As the administrator of the *Ontario New Home Warranties Plan Act*, we believe we should be held to a high standard with respect to public accountability. We respect the role the Ombudsperson Office plays in making this so.

Thank you for the opportunity to comment on your report.

Howard Bogach  
President and CEO  
Tarion Warranty Corporation