



TARION OMBUDSPERSON OFFICE

2014 Annual Report

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ANNUAL REPORT MESSAGE



The annual report message is often used to identify themes as well as opportunities for Tarion to make improvements. This year, the message focuses on the Office itself.

The goal of the Tarion Ombudsperson Office (the Office) is to protect and promote fairness within Tarion. The Office receives, investigates and seeks to resolve complaints from homeowners regarding their interactions with Tarion. By focusing on complaint prevention through early resolution, complaint tracking, identification of root causes and resolution advice, the Office plays an important role in resolving issues at an early stage, while using investigations to address more complex cases and systemic issues.

The Ombudsperson Office received 246 complaints and inquiries in 2014. Our case work attempted to resolve these complaints, and included several systemic and general recommendations to Tarion. This report provides an update on the activities of the Office in 2014 as well as a summary of cases and recommendations.

The Annual Report message is an opportunity to introduce the report. It can be used to identify themes and opportunities for Tarion to make improvements. This year, the message focuses on the office itself. The first Ombudsman was established in Sweden in 1809, in the twentieth century the concept expanded to other governments, then to organizations and academic institutions. In 2014, the Forum of Canadian Ombudsman (FCO) released a statement of ethical principles for members. These principles reflect the diversity of practice and establish ethical standards for Ombudsmen in Canada. They include classical ombudsman like the provincial Ombudsman, as well as offices operating in corporations (Corporate Ombudsman can be found in both public and private sector organizations), and in Colleges or Universities. The [FCO standards](#) establish five principles: Independence, Impartiality, Fairness, Confidentiality, and Credibility. I will briefly outline how the standards relate to the Tarion Ombudsperson.

The Tarion Ombudsman office meets or exceeds these standards.

The **Independence** standard holds that in order to be considered independent, the Ombudsman should be

“independent in purpose, administration and decision-making”. The independence of the Tarion Ombudsperson is protected by its terms of reference which provides the structure to protect the independence of the Office. I report to the board of directors, and the budget is negotiated directly through the board of directors. As a result, the office is free from interference by management and accountable for fulfilling the mandate to promote and protect fairness within Tarion.

The **Impartiality** standard holds that the Ombudsman is free from bias when reviewing complaint, and “acts to identify and address fairness concerns”. The Tarion Ombudsperson is not an advocate for any side in a dispute, but works to ensure that complaints are resolved fairly, and that Tarion is fair.

Fairness refers to the role and function of the office. The role of the Ombudsperson is to promote “fair processes, interactions and outcomes”. The office should also ensure that it conducts itself in a fair way. We have articulated fairness standards for how our office evaluates if Tarion has conducted itself fairly. These standards are used to guide our reviews, to evaluate how we conduct our reviews, and are used as part of our outreach and education activities within Tarion.

The **Confidentiality** standard establishes that Ombudsmen work confidentially. Communication, documents and other information received by the office are maintained in strict confidence. Information is only disclosed when Ombudsperson had received permission, or if it is appropriate to the mandate of the office. We maintain separate case management software, and the offices are set up to ensure confidentiality.

The **Credibility** standard is perhaps the most significant. It establishes the expectation that the Ombudsperson will operate in a manner that strengthens the integrity and effectiveness of the Ombudsman process. This means that the Ombudsperson must be active in resolving complaints and engaged in promoting fair practices. This annual report provides an important accountability function, reporting on the activities of the office, and resolution of complaints.

ANNUAL REPORT MESSAGE_(continued)

The credibility of the Tarion Ombudsperson is established in our effective complaint resolution, and implementation of recommendations. In the six years that the office has been in place, we have received over 1800 complaints and inquiries. We have worked to achieve fair resolutions to complaints, and have made 155 recommendations (relating to individual cases and systemic issues). 88% have been fully implemented, with a further 11% partially implemented. Tarion takes recommendations made by this office seriously. Tarion's response to recommendations made by the Ombudsperson is one of the metrics used to evaluate Tarion's corporate performance. Furthermore, corporate practices that started as recommendations are also incorporated into Tarion's ongoing operations. For instance, in 2011, the Ombudsperson recommended that Tarion incorporate plain language into its written communication. Tarion accepted this recommendation, and has incorporated plain language practices into its ongoing communications plan. This record of success enhances the credibility of the office.

The Tarion Ombudsperson office is a corporate Ombudsman. We compare how we work to similar Ombudsman offices, and our Terms of Reference are reviewed on an annual basis. The office does not have the statutory protection of a classical legislative

Ombudsman. This difference in structure means credibility is strongly influenced by how we conduct our work; making it essential that the office acts impartially, is independent of Tarion management and provides a credible full and robust review process.

Locating an Ombudsman within the organization allows for greater proximity between the office and Tarion. Ombudsman offices are seen as a last resort (will only investigate once a complaint has been through all internal processes). Our proximity, allows the office to play a greater role in preventing problems. Through our early resolution process, we are able to intervene to secure fair outcomes. Our work is increasingly focused on early resolution, preventing unfair practices and analysing complaint trends. We discuss complaint trends with management, and provide proactive feedback to prevent other problems. This allows our office to achieve resolutions to complaints in a timely and effective manner.

Ensuring that the Tarion Ombudsman office remains a robust and credible service is of primary concern. We will ensure that we achieve this goal and fulfil the mandate for the office by being vocal advocates for fairness, while achieving effective complaint resolution.



OMBUDSPERSON OPERATIONS

How the Ombudsperson Office works

The Ombudsperson receives complaints from homeowners, but works with many different stakeholders including homeowners, Tarion employees and builders. In doing so, we pledge to treat all who deal with our office with dignity and respect. 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, and**
- **Giving reasons for our decisions**

When the Ombudsperson Office receives a complaint, we seek to understand the concerns and obtain permission to look into the complaint. We then assess it. We look to see what efforts have been made to resolve the problem, and provide advice and guidance to assist homeowners in resolving their concerns. If we are the first people that the homeowners have contacted, we will discuss their concerns and provide advice, or refer complainants to the appropriate person within Tarion. If the complaint is outside the jurisdiction of the Office, we 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 Office will look for opportunities to resolve the case informally through a variety of conflict resolution techniques. In some cases, the Ombudsperson may investigate the complaint and issue a recommendation that ensures a fair resolution.

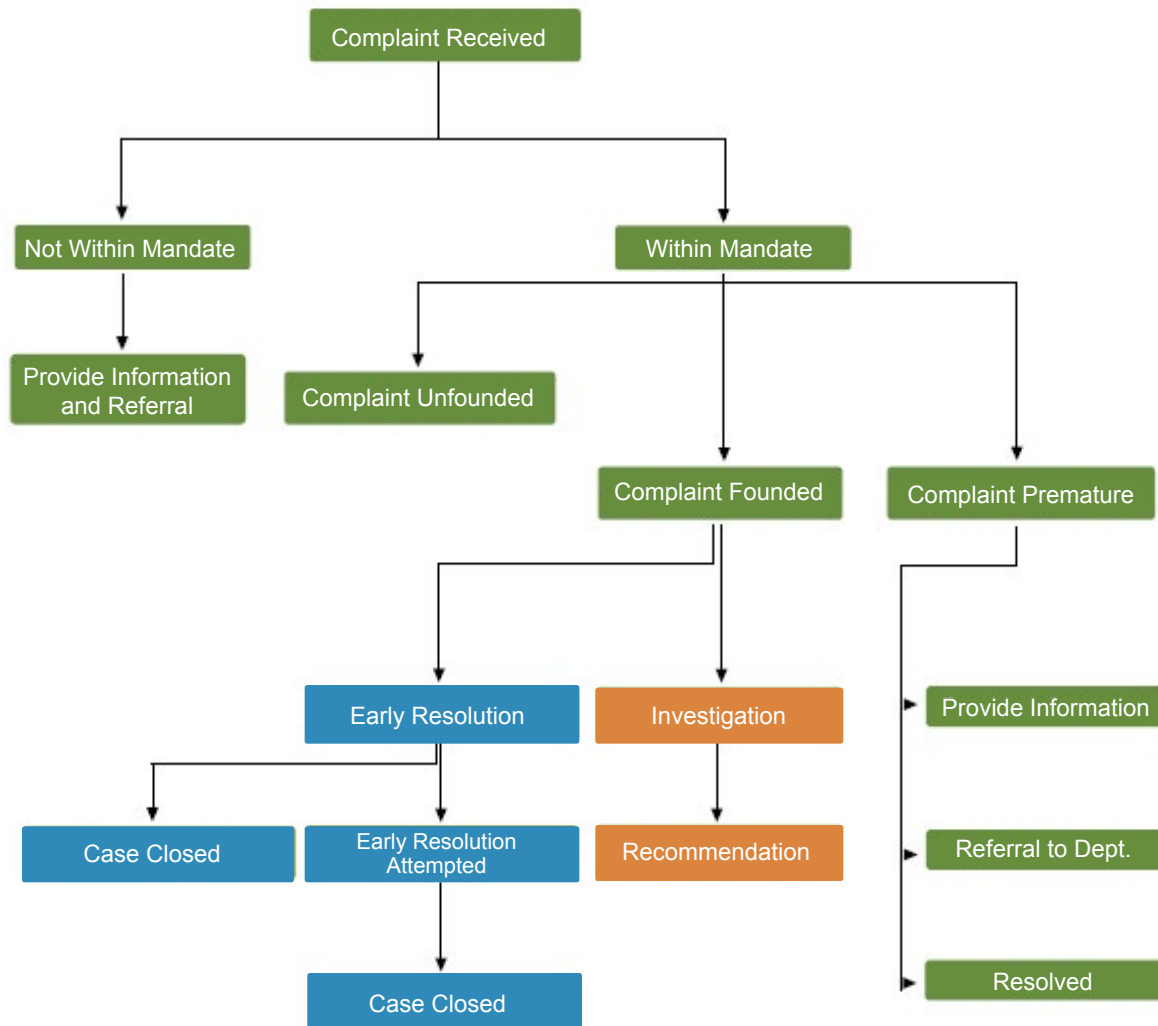
The Ombudsperson Office strives to be responsive and timely in its work, establishing service benchmarks to help achieve this goal. We aim to respond to initial inquiries within 24 hours. Case reviews are completed within five working days of when we receive permis-

sion to access the case. Early resolution and investigation can take longer to complete, depending on the circumstances. 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, during which time the 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. We do not deal with complaints outside of the warranty plan (the Ontario New Home Warranties Plan Act), concerns about employee impropriety, or privacy concerns. For more information on the mandate for the Ombudsperson, please refer to www.tarion.com.

When the Ombudsperson finds that a complaint has been substantiated, the Office works with Tarion to determine a fair solution. In some cases, we make a recommendation about the dispute, or systemic issues that affect more than one home. The Ombudsperson attempts to ensure the remedy addresses the problem.

OUR PROCESS



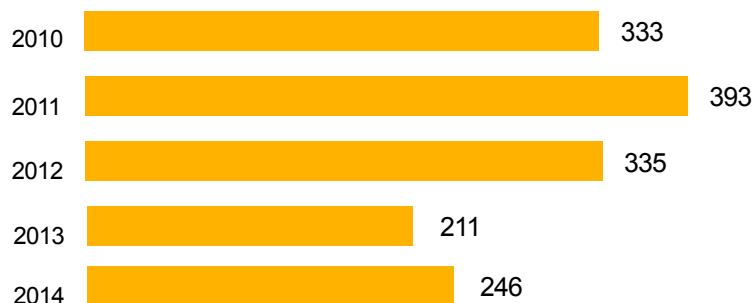
STATISTICS

The Ombudsperson Office received 246 complaints and inquiries in 2014. Of the 246 complaints, 219 fell within the jurisdiction of the Office (as outlined in the Terms of Reference which can be found on www.tarion.com).

The majority of the non-mandate complaints were related to Tarion, but were excluded from our mandate. Complaints from builders are an example of a non-mandate complaint.

Jurisdiction of Ombudsperson Complaints

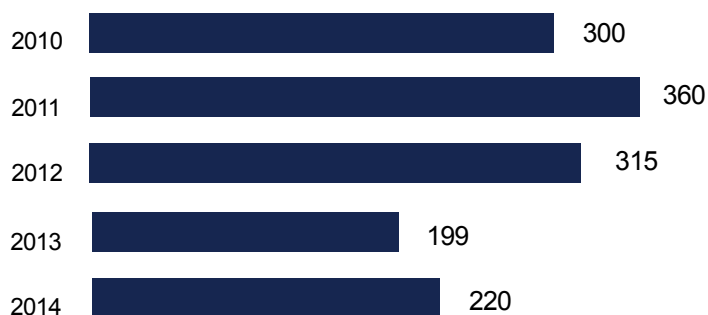
Total Complaints



Complaints outside Jurisdiction



Complaints within Jurisdiction



Jurisdiction Unknown/Unable to Assess



Type of Complaint

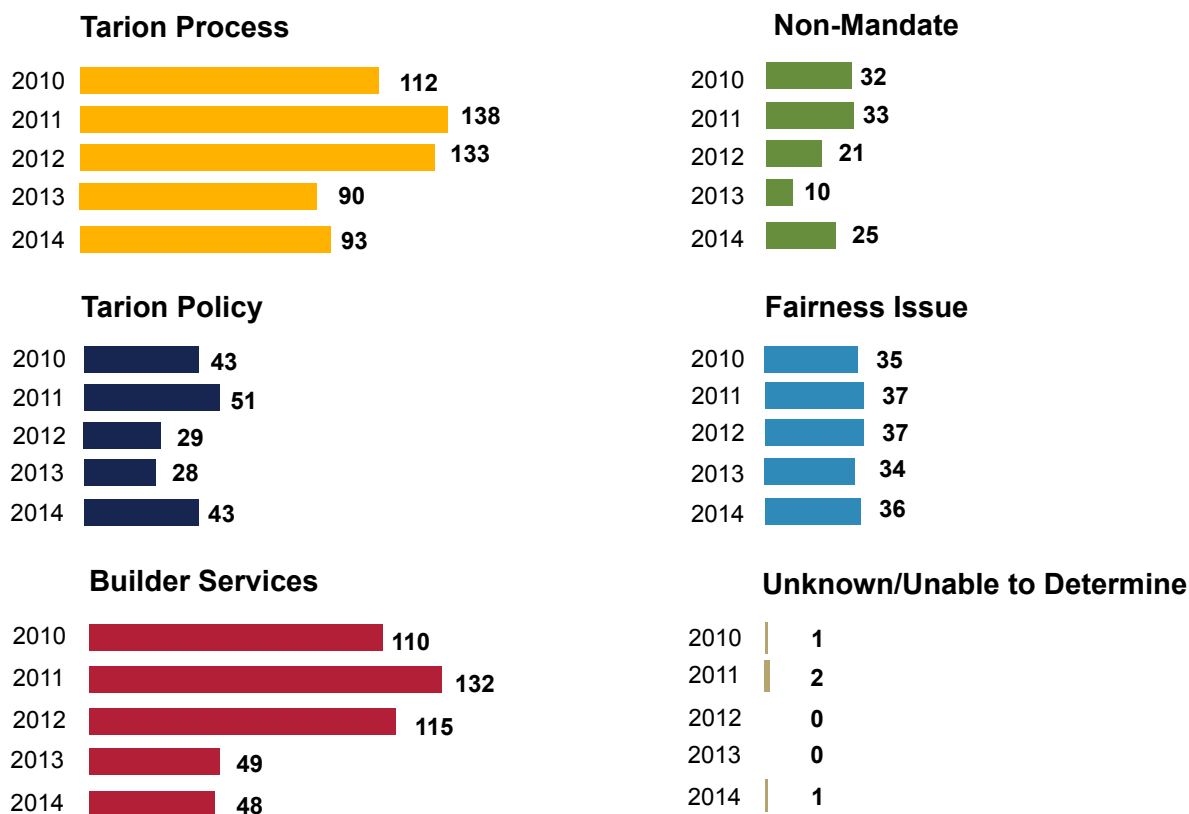
When the Ombudsperson Office receives a request for information, inquiry or complaint, we assess the concern and track the issue(s) presented. Complaints about Tarion processes and builder services continue to be the most common types of complaints. “Builder services” refers to complaints about the service provided by builders to homeowners. These complaints are not directly related to Tarion but are important to track because part of Tarion’s role is ensuring builders meet their obligations under the warranty, and educating them regarding effective service.

Complaints about Tarion’s process and builder service tend to be resolved in the intake phase of the Ombudsperson process. In many cases, the Office helps

complainants to understand the warranty process, explains how to manage their warranty complaints, and makes referrals to appropriate Tarion staff. These cases tend to have fewer interactions and are closed with one or two contacts. This demonstrates the importance of the informal role the Office plays in preventing problems from escalating.

Complaints related to fairness issues remain the most complex, and take the longest to resolve. We consider the basis of a complaint to be a fairness issue in cases where it includes (but is not limited to) aspects of procedural fairness, the substance of decision-making, or where interpersonal issues undermine fairness.

Types of Complaints Received by Ombudsperson



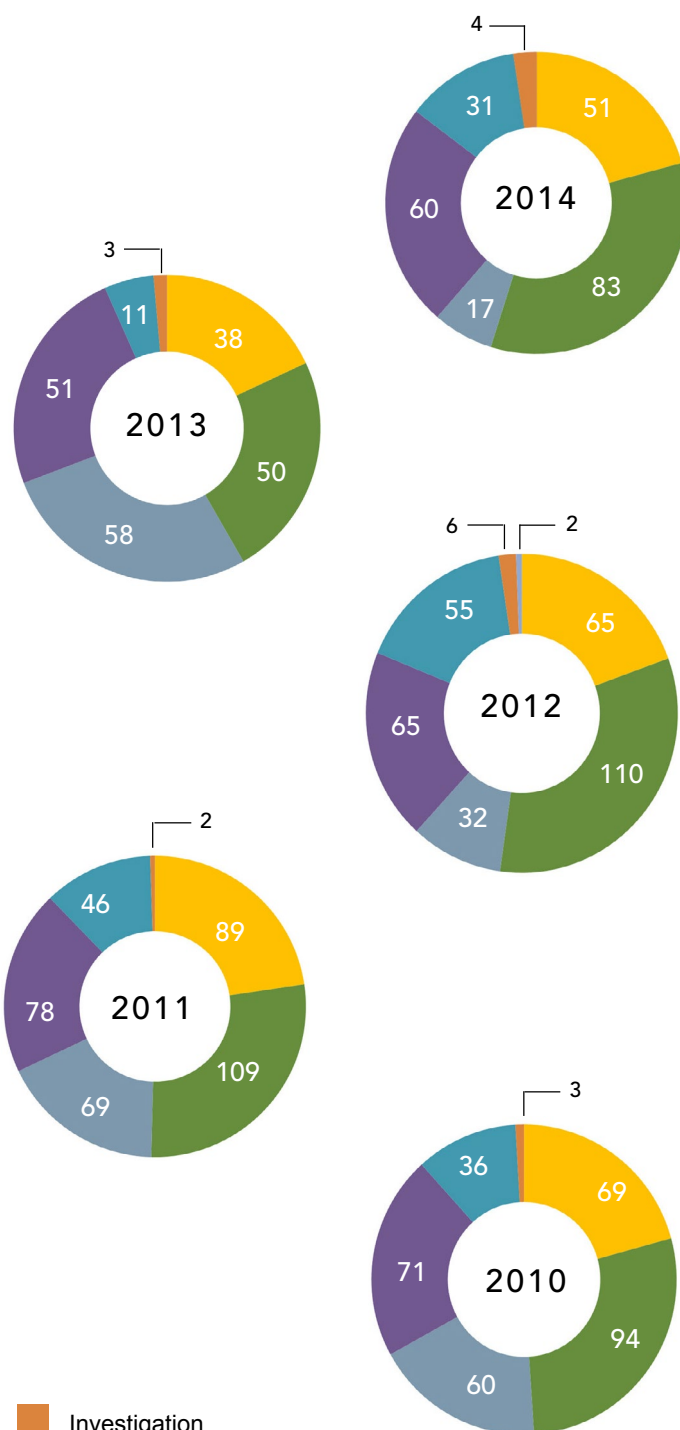
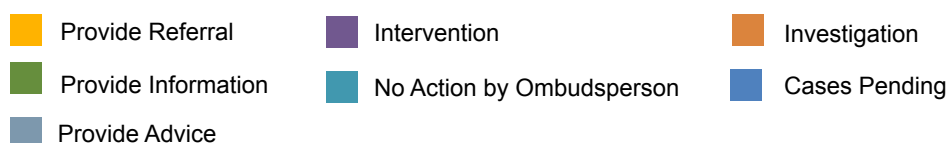
* The Ombudsperson Office started tracking Builder Services complaint issues as a separate category in July 2009.

Actions

Action refers to how the Ombudsperson dealt with the complaint. Table 3 shows the important role the Ombudsperson Office plays in informally resolving complaints. It demonstrates how the Ombudsperson works to resolve concerns informally by providing information, referral and advice. The Ombudsperson is designed to be an office of last resort. This means that complainants need to address their concerns to the relevant department before we will investigate a complaint. Most cases where we provide advice and referral are premature, because the complainant has not addressed his/her concerns to the appropriate Tarion department. In these cases, we provide information about the complaint process and advice to complainants about how to effectively complain to Tarion. It is our experience that in most of these cases, homeowners are able to resolve their complaints and inquiries with only one contact with the Ombudsperson Office.

Intervention refers to cases where the Office attempts to resolve complaints using a variety of conflict resolution techniques and strategies. Investigation refers to formal investigations which result in findings and recommendations. We continue to focus our interventions toward early resolution as we have found it more effective to focus on conflict prevention through early resolution than investigating what went wrong after the fact.

Investigation remains an important function of the Ombudsperson Office and is used when problems cannot be resolved informally, where there are disputes over the facts of the case or where the problem may have systemic implications.



Resolution

The table below shows how the complaints and inquiries were resolved, and how this corresponds to the phases of Ombudsperson complaint process: intake, early resolution and investigation. Cases that were closed during the intake phase were inquiries and requests for information where the issue was premature or fell outside the mandate of the Office. Issues are determined to be premature when complainants have not yet attempted to resolve their complaints with the relevant Tarion department. In these cases we provide information and referral to appropriate resources.

Early resolution involves advice and intervention by the Ombudsperson Office. Early resolution can take one of several forms: we can provide advice to complain-

ants about how to resolve their concerns; we also attempt to resolve complaints through conflict resolution and negotiation; in some cases we conduct reviews to establish if a complaint is founded and may make recommendations. Investigation refers to a full and formal review of the file, interviews with relevant parties and conclusions based on the available evidence. Investigations may result in formal recommendations. The Ombudsperson Office also has the authority to start "own motion investigations." In these cases the Ombudsperson can choose to investigate an issue without an individual complainant.

Phase	Resolution	# of Cases				
		2010	2011	2012	2013	2014
Intake	Referral - Premature	51	78	56	35	41
	Abandoned by Complainant	34	43	55	10	20
	Referral/Information - Complaint out of jurisdiction	25	23	17	6	18
	Information - Premature	67	82	86	38	52
	Referral/Information Complaint Unfounded	17	15	16	6	23
	Ombudsperson Office Withdrew	2	2	0	1	11
	Under Appeal	0	0	1	2	0
	In Litigation	1	2	2	0	0
Early Resolution	Advice to Complainant	48	65	28	55	10
	Review - Unfounded	29	13	19	12	23
	Facilitated Solution	16	23	17	8	11
	Review and Recommendation	16	13	13	7	13
	Early Resolution	24	32	17	28	19
	Compromised Solution	0	0	0	1	2
Investigation	Investigation - Unfounded	0	2	2	0	1
	Investigation and Recommendation	3	0	5	3	3
Pending	Cases with outcome pending	0	0	0	0	0
Total		333	393	335	211	246

CASE STUDIES

The following section includes case studies, which show how the Office works, and provides an opportunity to learn from complaints. These examples are based on actual complaints that the Office received in 2014. Some details have been altered to protect the confidentiality of the people involved.

Case Study #1 - Improper Decision

Mr. J contacted the Ombudsperson office to complain that a builder was no longer willing to complete a repair. Mr. J. said that the builder had spoken to Tarion, and was advised that he no longer needed to complete the repair because Mr. J had voided the warranty.

We examined the file. Mr J. observed problems with the ceiling in his condominium. He reported the defect as a crack and noticeable sag on the 30-Day Form. During the builder repair period, the builder contacted Mr. J. and indicated that he would repair the area. Mr. J was unable to be home during the repair, so the builder asked Mr. J to mark the area. Mr. J used a red permanent marker to circle the crack which ran the length of the ceiling. The builder attended the unit, reviewed the area and then contacted Tarion to discuss the problem. The builder reported to the homeowner that Tarion advised that the marks on the ceiling constituted a "Homeowner alteration," which would void the warranty and therefore the builder was not required to repair the damage to the ceiling. The builder used this direction as the basis for the decision not to complete the repair.

The Ombudsperson agreed that the Ontario New Home Warranties Plan Act states that a homeowner alteration would affect the builder's responsibility. We also determined that Tarion should not have made an assessment over the phone. It was not fair for Tarion to find that the red sharpie was an alteration, because the builder had agreed to let the homeowner mark the area. Additionally, the marks would have been covered up by the process of remediating the reported defect. The ceiling repair required that the drywall be repaired and the ceiling re-painted – repairs that would easily cover the marks. The Ombudsperson

requested that Tarion contact the builder to correct the inaccurate information. Tarion agreed, and the builder completed the required repairs.

Case Study #2 – Under Investigation Status

Mrs. B contacted the Ombudsperson after Tarion conducted a Conciliation Inspection, and issued its warranty assessment. She was upset with the results. The largest and most important item was the installation of the roof shingles. The assessment found that the reported problems with the shingles were not warranted because Tarion could not observe the defect. Mrs. B. reported that the builder called her and said



that since Tarion found there were no problems with the roof, he considered all her issues resolved.

The Ombudsperson office reviewed the report. In the discussion of the roof defect, Tarion stated it was unable to assess the defect due to the height of the roof and the necessary safety precautions. The report stated that Tarion would need to hire an expert to inspect the roof. The report also said that the defect was not warranted. A month had passed between when the report was issued, and when Mrs. B had contacted the Ombudsperson. Tarion had not sent any further information regarding its decision to reinspect the roof.

The Ombudsperson contacted Warranty Services. Tarion confirmed that they needed to hire an expert to review the roof, but were having difficulty finding a

qualified expert who could do it safely. We determined that Tarion had made an error in finding the roof “not warranted.” It should have been recorded as “Under investigation.” Tarion had recently revised its process for items requiring further investigation. The staff member responsible was not aware of the change, and had applied the wrong status in the assessment report. We recommended that Tarion reissue the warranty assessment to show that the item was under investigation. We further recommended that Tarion apologize for the poor service, and requested that Tarion contact the builder to advise him of the error in the assessment. Tarion accepted the recommendation. Tarion attended the home several weeks later, and the roof was determined to be defective, and the builder was required to remove and replace the shingles.

Case Study #3- Investigation Required

Ms. A. contacted the Ombudsperson office to complain that she was unhappy with the way Tarion dealt with her concern which she believes was an emergency. She indicated that there was a water leak and sewage backup in the basement. The problem was large enough that her daughter, who resided in the basement, had to move out. She identified concerns with a smell of sewer gas in the basement. Ms. A. reported the smell on her 30-Day Form, and contacted Tarion several times, but was disappointed that she had not received any action to address the concerns. The home was still in the builder repair period, but

Ms. A was not satisfied that the builder was taking the matter seriously. The builder denied there was a problem with sewer gas, and blamed the sewage back-up on improper use.

The Ombudsperson reviewed the file. We determined that Ms. A had contacted Tarion on several occasions to complain about the smell of gas, about the sewage backup, and the builder’s response. Tarion had provided information about the warranty process, and contacted the builder. The builder helped clean up after the sewage leak, and Tarion decided not to conduct an emergency or investigative inspection, but agreed to allow the builder to have the complete repair period. We found several occasions where Tarion committed to returning Ms. A’s calls, but did not follow through. Tarion was content to allow the builder the time to make the repair, even though the builder stated that he did not believe there was a problem and would not do any more work. Ms. A had to hire an expert to prove that the problems were linked to a builder defect.

The Ombudsperson office determined that it was unfair to make Ms. A wait, due to the potential health risk and the builder’s response stating that they considered the matter resolved. We requested that Tarion review the expert reports, and conduct an investigative inspection in order to determine the source of the problem. Tarion attended the home with the builder and determined that the report was correct and the issue was a builder-related defect. The builder completed the repair, and the homeowner was reimbursed for the cost of the reports that proved the defect.

Case # 4 – Date of Possession Dispute

In late September Mr Q. contacted the Ombudsperson to complain that Tarion had unilaterally revised his date of possession. He was upset that this would change his warranty dates. He had confirmed his warranty start date a month earlier, and now Tarion was changing the date. Mr. Q said it was not fair, because Tarion had told him the date was November 22, and it should honour the date.



We reviewed the file. The original warranty start date was October 30. Due to an administrative error, the date was changed in Tarion's record to November 22. The date also changed on MyHome (the online homeowner portal which provides warranty dates). Mr. Q was correct that he wrote to Tarion in August to confirm the date, and was told it was November 22. In September, the builder contacted Tarion stating that the date should be October 30. Tarion reviewed the information, and concluded that the builder was correct. The information was updated and Mr. Q was informed of the change.

We determined that the error was inadvertent. We also confirmed that Tarion was correct in changing the date to October 30. The decision was consistent with the rules established in the Ontario New Home Warranties Plan Act. It would not have been fair to the builder, or other homeowners to allow Mr. Q to have an extended warranty. We found it unfair that Tarion had changed the date without informing Mr. Q that the possession date was under review. We also found it unfair that he was not given an opportunity to provide any information to Tarion about the dates before the decision was made. It was clear that Tarion wanted to make a quick decision in order to inform Mr. Q before his warranty period expired, however, this did not negate Tarion's responsibility to be fair.

Fair process rules indicate that people should be informed that a decision needs to be made, should be given a chance to present their case, and be given reasons for the decision once the decision is made. The Ombudsperson did not recommend the warranty start date be changed, but did recommend that Tarion apologize for how the decision was made. Tarion accepted and implemented the recommendation.

Case Study # 5 - Investigative Inspection

R and R contacted the Ombudsperson to complain that Tarion abandoned them. They reported that their basement had flooded several times over the first two years they were in the home. The builder repaired the problem once, the other times R and R were forced

to clean up the damage and repair problems on their own. Finally, after the fifth flood, R and R submitted a Second-Year Form. During the builder repair period, there was another flood. R and R called Tarion, and an investigative inspection was scheduled. Tarion attended, and determined the source of the floods. The builder was given 30 days to complete the repairs. The builder made some repairs, but the homeowners were not satisfied that the work was completed properly. Six months after the repairs were finished R and R contacted Tarion to say that they were not happy. They were told that they were too late – they should have called Tarion at the end of the 30 day repair period. R and R then called the Ombudsperson to complain.

The Ombudsperson office reviewed the file. We quickly identified that Tarion had not followed up to assess if the repairs were complete. The investigative inspection report gave the builder 30 days to complete repairs, but did not make it clear that the homeowners were required to contact Tarion if they were unhappy. We requested that Tarion review the work. Tarion completed an investigative inspection and determined that the repairs had addressed the defect. We identified a gap in the investigative inspection process, and requested that Tarion make the responsibilities of each party at the end of the 30 day repair period clear. Tarion agreed and revised the policy, shifting the onus to Tarion to follow up to ensure that the issues are resolved.



R and R were upset that they paid money to complete repairs during the first year warranty. They requested Tarion reimburse their costs. We found that this request was not reasonable because they had not reported the defects to Tarion, nor had they given their builder a chance to fix them. This is an important case for homeowners to consider. Tarion was limited in how much it could do to assist R and R because they did not report the defects to Tarion, or follow the warranty process.

While the Ombudsperson office sees cases where Tarion could operate more fairly, Tarion is governed by the limits of the act and the warranty process. Tarion must be fair to all stakeholders. Consumers must protect their rights by becoming familiar with the warranty program, knowing the relevant dates, reporting warranty concerns and requesting conciliations. Knowledgeable, active and engaged consumer self-advocacy is the most effective way consumers can protect their warranty rights, and use the warranty program to provide fair and effective resolution of warranty complaints.



RECOMMENDATIONS

The mandate for the Ombudsperson includes resolving individual complaints and addressing systemic issues based on themes identified while resolving complaints. 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.

The Ombudsperson Office can make recommendations related to individual decisions, including: suspending or postponing an action; reconsidering or changing a decision; and reducing delays. We can recommend that Tarion provide an apology or provide financial restitution. We make recommendations to improve communication, make changes to service or provide reasons for decisions in individual cases. Our systemic recommendations are to make changes to policies or practice.

The table below provides a breakdown of the types

of recommendations that the Office has made since it was established, and Tarion's response to them. In cases where we make case specific recommendations, we work with Tarion to ensure there is understanding and specific agreement in implementing the recommendations. The Office then monitors the implementation.

The Ombudsperson Office is in regular communication with Tarion regarding the implementation of recommendations made in the annual report. During 2014 Tarion met the commitments made to address recommendations made in the 2013 Annual Report.

I am concerned that Tarion's response to recommendations made outside of the annual report is different than the response to recommendations contained in the report. Further commentary on this is provided below.

RECOMMENDATION TRACKING 2009-2014	Pending	Implemented	Partially Implemented	Not Implemented	TOTAL
Suspending or Postponing Action	0	1	2	0	3
Reconsidering or Changing a Decision	0	48	6	0	54
Reducing Delays	0	6	1	0	7
Apology	0	12	0	1	13
Financial Restitution	0	3	0	0	3
Improve Communication (Individual case)	0	6	0	0	6
Provide Reasons for Decisions (Individual)	0	20	2	0	22
Recommend Improvement to Service (Individual)	0	6	0	0	6
Recommendation to Change Policy	0	13	0	0	13
Recommendation to Change Practice	0	22	5	0	28
Total	0	137	17	1	155

Systemic Recommendations

1. Recommendation Response and Implementation

Over the past six years Tarion has committed to responding to recommendations made in the Ombudsperson Annual Reports. Tarion tracks and reports on progress toward addressing them, however, this practice does not apply to recommendations that are made throughout the year. The effect is that recommendations are treated differently depending on when they are made. We have worked to make recommendations timelier, issuing them when investigations are complete, along with recommendations contained in the annual report. I am also concerned that recommendations are treated differently depending on which department receives them. Some departments have effective means of tracking and reporting back regarding implementation of the recommendation, whereas others are dealt with on an ad hoc basis. The result is that some recommendations languish until we ask for progress reports. This is not satisfactory.

The Ombudsperson recommends that Tarion develop a consistent practice to track Ombudsperson recommendations, management responses to the recommendations and progress toward their implementation. Furthermore, Tarion Management should include all recommendations in its internal reporting about Ombudsperson recommendations.

2. Policy and Process Training

When conducting investigations and early resolution work, the Office looks to resolve the presenting issue, and understand the cause of the problems. As a result of this analysis, the Office has observed that a common underlying factor in times when we find that Tarion has conducted itself unfairly is lack of adequate processes to support fair practices. Over the past several years we have worked with Tarion to identify gaps in policy, or areas where practices were not consistent with an explicit policy. Tarion has made efforts to address these concerns. Now that Tarion has more clear and effective internal policies, we see that the

cause of problems is lack of awareness of the rules. In some cases, staff have not read the revised process, or have read but not retained the information. In other cases the policies are updated and staff are told to read the policy, without being informed of the scope or intent of the changes. The effect is that good policies are undermined by ineffective implementation.

The current process of informing staff of new policies and policy changes is not effective. I recommend that Tarion reviews how it informs and educates staff about new or revised policies. This review should include examining the most appropriate means of informing staff of changes and developing an array of training options to educate and inform them.

3. Unwilling and Unable Process Review

Some of the most complex complaints we receive come from homeowners whose builders are under investigation for, or determined to be Unwilling or Unable to fulfil their responsibilities under the warranty program. The Unwilling or Unable designation appears in Tarion Builder Bulletin 42 where it states that: *Tarion may in its sole discretion, extend or shorten any times set out in the Claims Process (including those described in Appendix A) if it determines that a builder is unable or unwilling to repair or resolve the claim items covered by a warranty.*

Our review of our case files and Tarion's records have led to the conclusion that the Unwilling and Unable process should be revised in order to ensure that it is more fair and effective. We have identified the following concerns with the process:

1. Absence of a clear definition of what would be necessary in order to determine a builder Unwilling or Unable to fulfil their responsibilities.
2. An underdeveloped decision-making process.
3. Absence of fairness principles in the decision-making process (builders not informed of why their behaviour is suspect, lack of predictability for

RECOMMENDATIONS (CONT'D)

affected homeowners and inadequate reasons for decisions).

4. Decisions are characterized by a slow or ineffective decision-making process.
5. Ineffective monitoring. In cases where Tarion decides to monitor builder conduct, it does not articulate clear criteria against which future behaviour will be measured.
6. Decision to make a builder Unwilling or Unable appears to be a yes/no decision without consideration of whether other action by Tarion is appropriate (like terms and conditions on enrollment).

The advantages of developing a clear definition include:

1. Clarity for consumers, current and future. Greater predictability during the warranty process.
2. Clarity for builders.
3. Tarion is better able to deal with rumours/speculation about builder conduct because there is a clear threshold.
4. Improved process supports better decision-making.
5. Decreased risk of wrong decision. Therefore, better consumer protection and builder rights, while reducing risk of Tarion having to cover for wrong decisions.
6. Establishes common yard-stick to measure builder behaviour.

Elements Tarion should consider for inclusion as part of the evaluation of a suspected Unwilling or Unable builder:

1. Cooperation – activity in resolving warranty concerns.
2. Nature of the threat – the impact of the decision to make a builder Unwilling or Unable (including impact on homeowners, impact on the builder,

impending warranty concerns, and other Tarion regulatory functions).

3. Assessment of the builder's capacity to address warranty commitments.
4. Assessment of the builder's response and the practicality of any proposed means to address the problem – the builder should be required to provide a response to Tarion addressing the specific concerns.
5. Prior investigations of the builder.

I recommend that Tarion review the Unwilling or Unable process – including the investigation, decision-making and follow-up, and enact changes to support a fair and consistent decision-making process.

Conclusion

Since its establishment in 2009, the Office has received over 1,800 complaints and inquiries.

The role of the Ombudsperson extends beyond resolving individual complaints, and toward promoting fair practices across Tarion. The Ombudsperson Office achieved success in 2014 by working with employees from every department within Tarion.

I am proud of the role the Ombudsperson Office has played in affecting positive change within Tarion, and appreciate that both Tarion management and the Board of Directors support this important role. I would like to extend my gratitude to all the employees with whom the Office interacted 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 collaboratively to resolve complaints, and promote fair practices in the future.

Ian Darling,
January, 2015.

MANAGEMENT RESPONSE



In the interests of fairness, we're committed to acting on what the Ombudsperson recommends; this includes being more consistent in how we track this Office's recommendations.

Part of the mandate of the Ombudsperson's Office is to identify complaint trends and systemic issues, and to recommend improvements. On behalf of the Board of Directors, Tarion's management team is pleased to respond to the following recommendations made in the 2014 Ombudsperson Annual Report:

1. Recommendation Response and Implementation:

The Ombudsperson recommends that Tarion develop a consistent practice to track all Ombudsperson recommendations.

The Ombudsperson has noted that, while the systemic issues noted on previous annual reports are tracked, the same practice does not apply to recommendations made throughout the year. In addition it was also noted that recommendations are treated differently depending on which department receives the recommendation.

The Ombudsperson recommends that Tarion develop a consistent practice to track the recommendations, management responses, and progress toward implementation. It is further noted that Management should include all recommendations in its internal reporting relative to the Ombudsperson recommendations.

Tarion management agrees that Operations will work with the Ombudsperson to change the process. The revised process will be developed to include the following.

- Recommendations from the annual report will be captured and tracked separately from the ongoing day to day recommendations
- Recommendations relative to all departments within Operations will be tracked and maintained

A meeting will be scheduled with Operation's departments to work on timing and our response. Representatives from each department will be responsible to provide updates and responses to recommendations to the Warranty Services Liaison for tracking. A process will be developed outlining the

method of tracking for the **April 1st** Consumer Committee Meeting.

2. Policy and Process Training

Tarion should develop a more effective process of training staff on policy changes and revisions.

The Ombudsperson has noted that the cause of problems in some of the cases is the lack of awareness of the rules and noted that in some cases when the policies are updated and/or revised the staff have not read or retained the information.

The Ombudsperson has noted that the current process of informing staff of new policies and policy changes is not effective and recommends Tarion review how it informs and educates staff about new or revised policies

Management is committed to review the current methodology for communicating policy and process changes. The review will include representation from Licensing & Underwriting, Stakeholder Relations and Enforcements. The review will be completed by **March 31st** and recommendations for changes and training will be developed by **July 1st**.

Implementation of the recommendations will begin **September 1st** with a schedule to complete implementation by **November 30th**. This will take into account training for all departments within Operations and will therefore be dependent on when each department can schedule the implementation. For consistency, the department representatives for items 1 and 2 will be the same individuals.

3. Unwilling and Unable Process Review

The Unwilling and Unable process should be revised in order to ensure that it is more fair and effective.

The Ombudsperson has noted that some of the most complex complaints received are from homeowners whose builder is being investigated to determine if they are unwilling or unable to fulfill their warranty obligations.

MANAGEMENT RESPONSE (continued)

The Ombudsperson has identified a number of areas in the process that should be reviewed and revised to make it more effective and fair, including a clearer definition, better communication to builders, consistent and timely decision-making.

Management will be reviewing BB42 regarding the definition of unwilling and unable and the current process. The review of the Bulletin and the current process will be completed by **June 30th**. Following the review, recommendations will be made with any relevant changes to the process and the Bulletin by **September 1st**. Proposed implementation of the changes will follow with the date to be confirmed.

Howard Bogach

President and CEO
Tarion Warranty Corporation