

# 2018 ANNUAL REPORT

CELEBRATING 10 YEARS  
OF FAIRNESS

 **TARION**  
OMBUDSPERSON OFFICE

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# OMBUDSPERSON'S MESSAGE

2018 marked the 10th anniversary of the launch of the Ombudsperson Office at Tarion. The Office was established in 2008 in order to provide homeowners with a means of recourse when Tarion acts unfairly and to assist in encouraging a focus on customer service at Tarion.

I'd like to use this opportunity to reflect on this milestone and how the Office has influenced the way Tarion does business. Over the course of the past 10 years, the Office has made 265 recommendations, all but two of which have been accepted and implemented by Tarion. These recommendations have resulted not only in specific remedies for individual homeowners who have been treated unfairly, but also have also influenced the way Tarion does business. By providing information and recommendations on best practices in administrative process, the Office has encouraged better customer service at Tarion.

When I look back on the last 10 years, I am encouraged to see signs of the Ombuds influence at Tarion. Some of the ways in which systemic recommendations from our Office have impacted Tarion's processes over the years are:

- Improvements to the transparency and clarity of the cash settlement process;
- Improved clarity around reimbursement for relocation and accommodation costs;
- Improved outreach to new builders;
- Improved effectiveness around the process for declaring builders unwilling and unable;
- The use of plain language principles to improve Tarion communication;
- More comprehensive monitoring of builders with poor customer service records.

In addition to these and other specific recommendations, the Office has worked hard over the years to gain the trust of Tarion management and staff. By demonstrating our professionalism and impartiality, we have been able to develop a relationship of cooperative influence with Tarion. This, in turn, has encouraged a culture of continuous improvement. Confident that we share a common goal of fair outcomes, Tarion has learned that our office can provide not just recommendations once fairness issues have been identified, but also pre-emptive guidance by helping them view all processes through a fairness lens.

*"Ombudsman offices build a just administrative culture based on a shared understanding of principles such as integrity and accountability."*

*- Professor Anita Stuhmcke*

I am very proud of the work done by the New Homebuyer Ombudsperson Office in 2018 and I look forward to a productive 2019. I hope that you will enjoy reviewing this report.



Jill Moriarty  
Ombudsperson





# WHAT WE DO

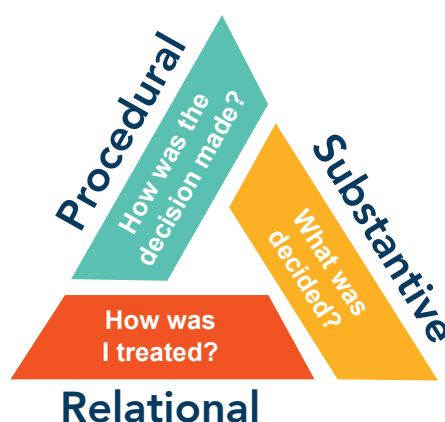
The Mandate of the Ombudsperson is to:

- Investigate and resolve complaints from homeowners about Tarion's conduct;
- Act as a source of information and help homeowners in getting assistance from Tarion;
- Identify issues and make recommendations for improvements.

Our office works to ensure that Tarion treats homeowners fairly. We do this by reviewing complaints from homeowners to determine whether there were any fairness issues in how Tarion handled their file.

## HOW WE DO IT

We use a three-part test<sup>1</sup> to determine whether fairness has been achieved



1. **Procedural** fairness: How was the decision made?

- Did the homeowner have enough information to understand the process and to advocate for themselves?
- Did Tarion provide reasons for the decision it reached?
- Was the decision reached in a reasonable amount of time?

2. **Relational** fairness: How was the homeowner treated?

- Did Tarion listen to the homeowner's concerns and address them?
- Did Tarion treat the homeowner with respect and courtesy?
- Did Tarion follow through on actions it promised?

3. **Substantive** fairness: What was decided?

- Did Tarion have the authority to make the decision?
- Was the decision based on complete and relevant information?
- Was the decision wrong in fact or policy?

*In 2008, fairness issues were found in 25% of the complaints received by the office, resulting in recommendations to Tarion. By 2018, this had fallen to 2%.*

<sup>1</sup>Developed from the concept of the satisfaction triangle, in: Moore, Christopher (2003). The Mediation Process: Practical Strategies for Resolving Conflict (3rd ed.). San Francisco: Jossey-Bass Publishers

# WHAT HAPPENS TO YOUR COMPLAINT?



*Number of  
complaints processed  
in 10 years: 3389*

# 2018 AT A GLANCE

**NUMBER OF CASES:** 471

## WITHIN JURISDICTION

Yes	442
No	29

## TYPE OF CONTACT

Information request	79
Complaint	392

## CONCERN

Builder Service	218
Tarion process	213
Tarion Policy	25
Non mandate	15

## ACTION TAKEN

Provide referral	181
Provide info/advice	155
No action	56
Fairness review	74
Investigation	0
Pending	5

## OUTCOME

Referral - premature	179
Referral - out of jurisdiction	27
Abandoned	55
Info - premature	118
Referral - complaint unfounded	12
Ombuds withdrew	6
Advice to complainant	12
Review unfounded	15
Facilitated solution	10
Recommendation	8
Early resolution	24
Cases pending	5

*“The Tarion  
Ombudsperson office  
has proven its worth by  
holding Tarion accountable  
for remediating  
violations of Tarion  
policy and process.”*  
Tarion Management

# REAL PEOPLE, REAL CONCERNS

## CASE STORIES

### Decision Letter Delay

Mr. Z did not agree with Tarion's assessment of items on his Year-End form. After receiving the Warranty Assessment Report in May, he contacted Tarion to explain that he wanted to dispute the findings. Mr. Z learned that the first step was to request a Decision Letter from Tarion which would outline the specific assessment items he disagreed with and provide Tarion's reasons for not warranting them. Once he received the Decision Letter, he would be able to appeal Tarion's decision to the License Appeal Tribunal. Mr. Z made the request.

In December, Mr. Z contacted the Ombudsperson Office to report that he had still not received the Decision Letter requested in May. He had been waiting for 7 months to exercise his right to appeal the warranty assessment.

The Office of the Ombudsperson reviewed his file and spoke to Tarion about the situation. We discovered that, from May to September, Tarion had repeatedly asked Mr. Z to clarify which items he wanted on the Decision Letter. Tarion had also requested that he send in a copy of the Agreement of Purchase and Sale.

Throughout the 5 months from May to September, Tarion was in regular email communication with Mr. Z, attempting to get this information. Because Tarion was pro-actively seeking necessary information, our office did not consider Tarion to be at fault for not issuing the letter before Mr. Z provided what was needed.

In September, after meeting in person with Mr. Z, Tarion was able to confirm the list of items for the Decision Letter. Following the meeting, Mr. Z sent Tarion a copy of his Agreement of Purchase and Sale.

However, the Decision Letter was still not issued. In November, Mr. Z called Tarion for an update. He was informed at that time that Tarion was still waiting for him to send in his Agreement of Purchase and Sale. Mr. Z was confused and frustrated because he had, in fact, already sent it to Tarion.

In our review, the Ombuds Office discovered that, due to a system error, Tarion received the Agreement but the relevant staff member had not been notified. The Ombuds Office brought this concern to the attention of Tarion. They recognized the error and issued the Decision Letter along with a written apology to Mr. Z for the delay.



### These Are Not My Countertops!

After living in her new home for almost a year, Ms. K began to suspect that her countertops were not what she had ordered when she purchased the home. She spent some time evaluating this concern and, with more research, became convinced that the quality of marble she received was not what she had ordered.

Unauthorized substitutions are covered in the One Year Warranty. So, when Tarion came to do Ms. K's Year-End Inspection, she brought up this concern to the Warranty Services Representative who advised Ms. K to include the item on her next Statutory Warranty Form.

Ms. K did as the Warranty Services Representative suggested and included the unauthorized substitution as an item on a Second-Year form.



She also spent time and money researching the countertop material so that she could prove her unauthorized substitution claim.

When it came time for her Second-Year inspection, the countertops were not warranted because Ms. K had not reported it within the first year of owning her home and unauthorized substitution is only covered under the first-year warranty. Ms. K felt this was unfair and contacted our office.

When the Ombuds Office reviewed this file, we found that by the time Tarion was made aware of the alleged unauthorized substitution, Ms. K had already missed the timeline for claiming the item under the one-year warranty. As a result, we found that there was no fairness issue in Tarion not warranting the item because the warranty on it had expired before it was reported. However, we did find that there was a fairness issue in Tarion's lack of clarity about the timeline of the unauthorized substitution warranty. Tarion should have informed Ms. K that she had missed the timeline for reporting unauthorized substitution when she first raised the concern. As remedy, we recommended that Tarion apologize for this lack of clarity. We also recommended that Tarion offer to cover the out-of-pocket expenses that Ms. K incurred to support her unauthorized substitution claim since she had been led to believe that there might still be warranty coverage for the item. Tarion agreed to do so.

*I received a call back within hours, both persons that handled my file were extremely professional and kept contact during the process and conciliation.*  
Homeowner

*The Ombuds review reinforced the need to make clear notes and to ensure best customer service practices are followed.*  
Tarion Staff Member

## Scheduling Woes 1

Mr. S wanted to schedule an inspection to have the items from his 30-day Statutory Warranty Form reviewed. He knew that failure to book the inspection within the required time frame could result in losing the opportunity to have his items assessed and covered under the warranty.

When he first called Tarion to request the inspection, he was transferred to the scheduling department. He was warned that this department was very busy and that he should leave a message, that someone would get back to him. However, a month passed with Mr. S contacting Tarion every few days and he still had not received a response or even confirmation that his request for conciliation had been received. Not knowing where to turn, Mr. S came to us.

When our office reviewed his file, we could see that Tarion had a record of the first contact that Mr. S had made to request the conciliation. It was clear that Mr. S had made contact with Tarion to book the inspection within the required time frame. Tarion had not been able to respond promptly, but they had the request on record and would treat it as received on time.

A day after Mr. S contacted us, Tarion's scheduling department called him to book the inspection. However, the delay Mr. S experienced fell well outside of Tarion's normal customer service standards. Our office spoke to Tarion and suggested that they acknowledge the delay in scheduling. Tarion agreed and contacted Mr. S to apologize. They also let him know that he would not be charged for the inspection.

*The Ombudsperson representative went above and beyond in our dealings with her. She was friendly, knowledgeable and very helpful. Thank you!*  
Homeowner





## Scheduling Woes 2

Sometimes the Ombuds Office can provide reassurance when a homeowner is anxious about time lines. We know that timelines can be stressful. After all, submitting forms and requesting inspections within required timelines is essential to protecting your warranty coverage.

Mr. D called the Ombuds Office because he was frustrated in his attempts to schedule an inspection through his MyHome account. He was doing his best to make sure he got his request for a One-Year inspection in to Tarion before the deadline but was having no luck. The system kept timing out on him. He left a number of voice-mails for Tarion and sent emails as well.

When Mr. D provided us permission to look at his Tarion file, we could see that his attempts had been noted on the file, even though Tarion had not had an opportunity to respond. We were able to assure Mr. D that his request for conciliation had been recorded in the system within the required time-lines. He could be confident that his request would be honoured and his warranty coverage would not be compromised.

**Have you ever wondered if other homeowners have the same concerns as you? If you are experiencing a problem, there is a chance you are not alone. The Ombuds Office tracks the type of complaints that are brought to us. When you let us know about a concern, it helps us understand how prevalent a problem is and gives us direction on the kinds of systemic recommendations we should be making to Tarion.**

**On page 11 you can read about the systemic recommendations the Ombuds Office made as a results of the Scheduling Woes cases.**

*“There have been many suggested changes from the Ombudsperson office over the years that have been implemented that have made Tarion a better consumer protection organization.”*

Tarion Management

## Scheduling Woes 3

When Ms. R's builder failed to address the items on her Year End Form, she knew that to protect her warranty, she needed to request an inspection with Tarion.

When she signed into her MyHome account to request the inspection, she experienced more headaches. The system told her that Tarion was unable to schedule her inspection online and that she needed to contact Tarion directly in order to process the request. However, the message did not provide any phone number, email address or specific information indicating who or where she should call.

Ms. R called the Ombudsperson Office. We were able to contact the proper department at Tarion and they reached out to Ms. R to schedule

her inspection. Ms. R's contact to the Ombuds Office helped to alert us to a systemic concern with the information that homeowners receive when the system does not allow for online scheduling.

*I thank you very much for the time, energy and assistance you provided to my parents and I to come to a successful outcome in this matter.*  
Homeowner



## Deployment Trouble

Mr. L submitted his 30-Day form to Tarion. Because the form was received two weeks after the submission deadline had passed, Tarion did not accept it. Mr. L was frustrated and reached out to the Ombudsperson Office for help.

While discussing his concern with us, Mr. L disclosed that the reason for missing the deadline was military deployment to a conflict zone. In reviewing the submitted documents, the Office noted that this information had not been provided to Tarion.

The Office met with the Director of Customer Service to discuss the case. The Director confirmed that the legislation that guides the warranty allows for accommodations to be made to time-lines when extraordinary circumstances are involved. She confirmed that military deployment would be considered an extraordinary circumstance and time-lines for the warranty process could be adjusted, if the homeowner communicates the need to Tarion.

The Ombudsperson Office determined that, as Tarion was not aware of the need to accommodate this homeowner, they had acted fairly in this circumstance. Mr. L was able to re-submit his form and no warranty coverage was lost.

*Ombuds staff have always been a pleasure to work with. I believe my explanations are listened to and understood for the best possible outcome for stakeholders.*

Tarion Staff Member

*An Ombudsperson recommendation led to Tarion developing the “Start Right” program for newly registered builders, to ensure that they are aware of their warranty responsibilities.*

## Directory Error

As part of the first and second year warranty process, Mr. J had several conciliation and claim inspections that resulted in cash settlement for many of his items. The amounts of the cash settlements were cumulative and appeared against his builder's record on the Ontario Builder Directory. However, following one particularly large cash settlement, the amounts on the Directory disappeared. Mr. J contacted Tarion for an explanation and was not satisfied with the responses he was given. He came to the Ombudsperson Office looking for clarification.

When we reviewed Mr. J's file, we found that he was correct. The appropriate amounts did not, in fact, ap-

pear on the builder's record. For some of the final claims that were settled with Mr. J, Tarion acted on behalf of the builder and these amounts would not appear on the Directory. However the rest of the claims, where Tarion found the builder to be in breach of the warranty should have been recorded. We spoke with various Tarion departments and traced the problem to a computer programming error that had resulted in the accumulated breach amount being overwritten by the instance when Tarion acted on behalf of the builder.

Once we drew this to their attention, Tarion moved quickly to trace the error and rectify it and to provide Mr. J with an apology. They also examined the historical records to find any other cases where this error had occurred and to correct them.

For more stories about real homeowners, visit our website at [ombudsperson.tarion.com](http://ombudsperson.tarion.com).

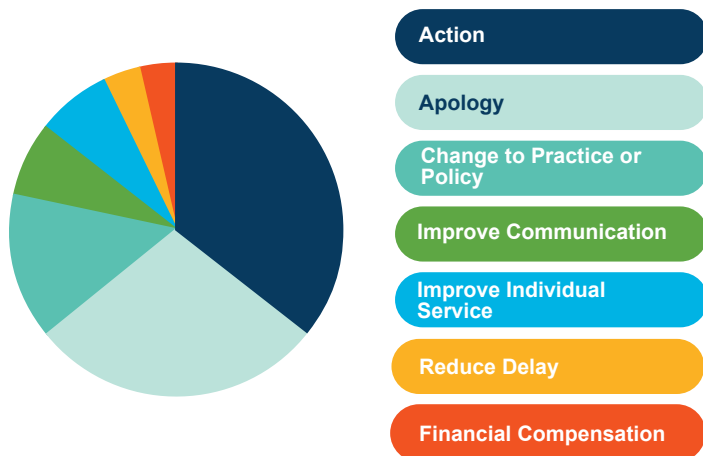
**The Ombuds Office made a systemic recommendation as a result of the case. You can read about the recommendation on page 13 of this report**

# RECOMMENDATIONS

Recommendation is the tool that an Ombudsperson uses to alert an organization to fairness issues and to suggest redress. Although Tarion has no legal obligation to follow the Ombudsperson recommendations, there have only been two instances in ten years in which Tarion has declined to implement a recommendation. All other recommendations have been accepted and implemented.

## Case Specific Recommendations

When the Ombudsperson Office review of an individual case results in a finding that there were fairness issues in Tarion's handling of the file, we will make recommendations for remedy. This recommendation may be for an action on Tarion's part, such as conducting a re-assessment, improving communication or providing additional information to the homeowner. It can also be a simple acknowledgment of an error and an apology. In 2018, the office made twenty-five recommendations and three suggestions in eight individual cases.



All individual recommendations were accepted by Tarion and have either been implemented fully or are in the process of being completed.

## Systemic Recommendations

As part of the 2017 Annual Report, the Ombudsperson Office made two recommendations: one involving the availability of information about Accessibility

and one involving Tarion's Honesty and Integrity Process. Both of the recommendations have been fully implemented.

For the 2018 Annual Report, the Ombudsperson Office has three systemic recommendations. They are:

### Recommendation 1: Scheduling Inspections

The scheduling of a conciliation inspection may be the first interaction many homeowners have with Tarion and it can be a pivotal point in this relationship.

A homeowner requests a conciliation inspection because they are not satisfied with the progress their builder has made in resolving their issues, therefore it stands to reason that they are already unhappy.

The homeowner knows that they have a specific window of opportunity to request the conciliation and if they experience difficulties with scheduling, anxiety about this deadline is added to the mix. This can leave the homeowner feeling abandoned and unsupported by Tarion, feelings that may colour the relationship going forward. If, on the other hand, they can connect with Tarion and easily access next steps in the warranty process, this can foster a trusting connection that will benefit the homeowner for the remainder of their warranty.

Homeowners are encouraged to request conciliation inspections online through the MyHome portal. However, over the past year, there have been a variety of issues that have resulted in a higher volume



of conciliation inspections that need to be scheduled manually, over the phone. This has meant an increase in telephone traffic that has impacted Tarion's ability to answer calls live and to provide a quick call back service. As a result, homeowners are often unable to speak with a person to confirm that their request for conciliation has been received and that they have met the requirement to respond within the time-line. Not surprisingly, in 2018 the Ombuds Office saw an increase in complaints about scheduling inspections.

While Tarion is aware of this issue and is diligently working to resolve it through systems changes, these systems changes will take time to work through. We believe there are some simple actions Tarion can take that will result in an immediate decrease in homeowner alienation.

Currently, when homeowners attempt to request an inspection through MyHome and are unable to do so, they receive a message which simply says, "Inspection cannot be scheduled online, please call Tarion for inspection scheduling". However, due to the high volume of calls, the homeowners have often not been able to speak with someone live. They leave a message and wait for a call back. This can create anxiety and frustration, and the closer the homeowner is to their request deadline, the more intense the feelings.

*Number of  
Own Motion  
Investigations  
in Ten Years:  
10*

An Own Motion investigation in 2016 resulted in a process to ensure that builders who are no longer registered remain under Tarion's scrutiny for as long as they have homes under warranty.

In order for Tarion to provide better customer service and to deliver homeowners the support they are looking for, the Office of the Ombudsperson recommends that:

- a) Tarion change the scheduling process to ensure that homeowners can more directly access scheduling staff.
- b) The message to homeowners who are not able to schedule online be changed to provide a phone number for homeowners to connect more directly with scheduling staff.

## Recommendation 2: Illegal Builders Conducting Repairs

One of the many ways in which Tarion protects consumers is by ensuring that all homes eligible for warranty coverage receive it, regardless of whether the builder was registered. This means that homeowners are not penalized for illegal activities on the part of their builder.

In most cases where illegal building investigations lead to prosecution, evidence provided by the homeowner helps Tarion to build their case and contributes to successful prosecution. The resulting court action and penalties help to discourage illegal building and benefit the new home community. However, this also places homeowners in a difficult position. The warranty is the responsibility of the builder and under normal circumstances, Tarion expects the homeowner and builder to work together to ensure that repairs and defects are addressed by the builder within the legislated builder repair periods. But in the situation where a homeowner has provided evidence against the builder, the homeowner may not be comfortable allowing the builder access to their home for repairs. They may be concerned that doing so will put their property and their families in a vulnerable position. This is a situation in which the normal warranty process may not serve the best interests of the homeowner. In extreme circumstances, it also has the potential to put homeowners and their families at risk.

The Ombudsperson Office recommends that Tarion adapt the warranty process to ensure that homeowners who provide evidence in good faith against their builders for illegal building do not experience retaliation for doing so. This adaptation should be based on an assumption that the homeowner is likely to need protection, rather than placing the onus on the homeowner to prove they are unsafe.

### Recommendation 3: Builder Directory Information

Tarion provides the Ontario Builder Directory as a tool that homeowners and the public can use to learn about Ontario builders and vendors. By listing information on enrollments, chargeable conciliations and claims, the directory can serve as a useful resource to help potential homeowners make an informed decision when choosing a builder. However, there is currently some confusion about what information appears in the Directory.

In settling claims, Tarion makes a distinction between two categories:

1. The builder is considered in breach of their warranty obligations; and,
2. Tarion is acting on behalf of the builder.

The category that a claim settlement falls under determines whether the claim appears on the builder's record in the Builder Directory. The Directory flags when a builder is considered to be in breach of their warranty obligations. But if Tarion acts on behalf of a builder to address a claim, this is not noted on the Directory.

Our office has found that there is no clear criteria available to homeowners to describe when Tarion acts on behalf of the builder rather than considering the builder in breach. This can be confusing to a homeowner who knows that a claim has been paid but does not see it appear on the Builder Directory. The result could be an impression that Tarion is not being transparent about the builder's record.

In order to ensure that the public understands the information posted on the Ontario Builder Directory the Ombudsperson office recommends that:

- a. Tarion provide clear criteria, available to the public, for how claims are classified.
- b. The current wording that appears on the Builder Directory about the information contained within it be revised to more accurately reflect the claims that appear there.

## MANAGEMENT RESPONSE

Tarion has accepted and will be implementing all three of the systemic recommendations from this year. You can find Tarion Management's response to them below.

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 2018 Ombudsperson's Annual Report.

Management is committed to continuous improvement and understands that the recommendations of the Ombudsperson contribute to our continuous improvement. Accordingly, we will strive to ensure that the manner in which we respond to both (a) the Ombudsperson recommendations in the report (and going forward); and (b) the Ombudsperson's day-to-day recommendations, will create effective, reliable and replicable fixes. Management is undertaking to "test" any proposed solution to an Ombudsperson recommendation for effectiveness, reliability and replicability in addition to responsiveness to the Ombudsperson's observations.

Howard Bogach,  
Tarion President  
& CEO



## Recommendation 1:

Tarion will be implementing changes in 2019 to the Scheduling Function. The Scheduling Function will be transferred to the Customer Centre. This change will ensure live service and prompt scheduling of inspections.

Timing for the completion of the transfer of the Scheduling Function – March 31, 2019.

The message that is currently received by homeowners who are not able to schedule inspections online will be changed to provide a phone number to the Customer Center in order to receive live service.

Timing for the implementation of changes to the message – March 31, 2019.

the C&I Intake Coordinator and Customer Services staff to identify these possible scenarios early in the process and make decisions for next steps as appropriate.

Timing for development of interim process – March 31, 2019.

A communication will be issued to Warranty Services, C&I and Customer Service to remind staff that if they receive a concern of this kind from a homeowner, they should report it to their Manager and the Warranty Services Advisor right away.

Timing for the communication to be sent to Warranty Services, C&I and Customer Service – January 31, 2019

## Recommendation 2:

Tarion will draft a formal policy to clarify that homeowners who are providing evidence against their illegal builder, or who express concerns related to safety, may not be required to follow the formal warranty process. The policy will confirm that these situations will be reviewed on a case-by-case basis and decided on the merits of each case.

A draft of this policy will be completed and reviewed with the Legal department and the Ombudsperson.

Timing for the completion of the review and draft policy – June 30, 2019.

Timing for the full implementation of the policy – September 30, 2019.

In the interim, each case that involves these circumstances will continue to be reviewed on a case-by-case basis. An interim process will be developed where the Warranty Services Advisor will work with

## Recommendation 3:

Operations will meet with both the Legal and the Stakeholder Relations department to complete a review of the current messaging related to the builder directory on the website and to discuss potential changes.

Timing for the completion of the review – March 31, 2019.

Revised wording will be presented to the Ombudsperson for approval.

Timing for the revised wording to be presented to the Ombudsperson for review – March 31, 2019.

Timing for the implementation of the changes to the wording on the website – June 30, 2019.



# III TARION

OMBUDSPERSON OFFICE



Left to right: Rachel Schmidt, Jill Moriarty and Fatima Ainanshe

## CONTACT US

If you have a fairness concern about Tarion or how your file is progressing, contact us. We are always happy to discuss your situation and help you figure out best next steps.

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