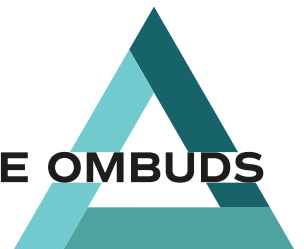


# 2019 ANNUAL REPORT

NEW HOME OMBUDS



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# Message from the New Home Ombuds

## 2019 was a busy year for the New Home Ombuds office.

During the year we saw an increase in the complexity of complaints coming to our office. Complex complaints will involve several different concerns, rather than just one or two, and will encompass a longer time period. These cases are more resource intensive and take longer to complete. While working to address these complex cases, we are collecting and analysing data to determine whether this is a trend that will continue into the future.

In 2019 we also conducted an in-depth policy review of Tarion's Video and Audio Recording policy. The resulting report can be accessed through this [link](#).

Two other noteworthy events in 2019 were the Auditor General's Value for Money Audit of Tarion and the provincial government's tabling of Bill 159, the Rebuilding Consumer Confidence Act.

The Auditor General's review took place over much of 2019 and the New Home Ombuds office participated in the audit by providing information as requested by the Auditor General's staff. The final audit report was issued on October 31 and included 32 recommendations to Tarion, some of which were directed at improvements to the New Home Ombuds organizational framework. Recommendation 29 called on Tarion to clarify that the New Home Ombuds staff report directly to the Board, and not management, for all operational and employment matters. It also recommended that provisions be added to the Ontario New Home Warranties Plan Act to ensure that our files remain confidential. Our office believes in the value of independent oversight and we are supportive of all of the Auditor General's recommendations.

Bill 159 was tabled and received first reading on December 5, 2019. If passed, it will separate the warranty and regulator roles creating a warranty authority, charged with backstopping the builder's warranties and a licensing authority, responsible for regulating new home builders. In addition to separating the warranty and regulator roles, the amended legislation requires the warranty authority to maintain an Ombudsperson, making our office statutory and ensuring that it will continue to be part of the protection that new homebuyers are entitled to in Ontario. It also expands the mandate of the office, giving us the duty to investigate and make recommendations not only about how Tarion treats homeowners but, more broadly, about how Tarion administers the Act.

Both the Auditor General's recommendations and the amended legislation will directly impact the New Home Ombuds and will result in increased independence for the office. For more information on our work to improve our independence, please see the section of this report entitled "Demonstrating Independence" on page 7.

I would like to take this opportunity to thank the staff of the New Home Ombuds office for their hard work in 2019. I am truly privileged to lead such a skilled and dedicated team.

Jill Moriarty, New Home Ombuds

# What we do

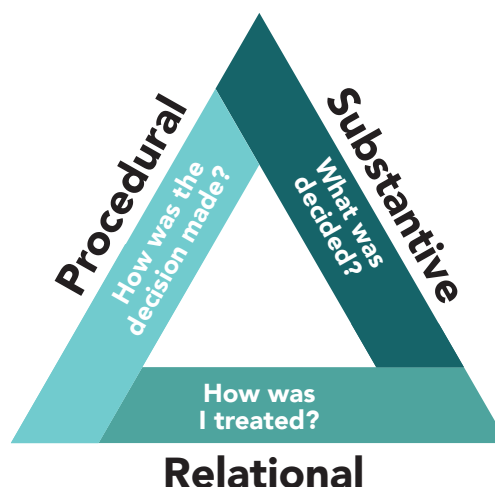
## The mandate of the New Home Ombuds is to:

- Investigate and resolve complaints from homeowners about Tarion's conduct;
- Act as a source of information, to help homeowners in getting assistance from Tarion; and to
- 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 fairness issues in how Tarion handled their file.

# How we do it

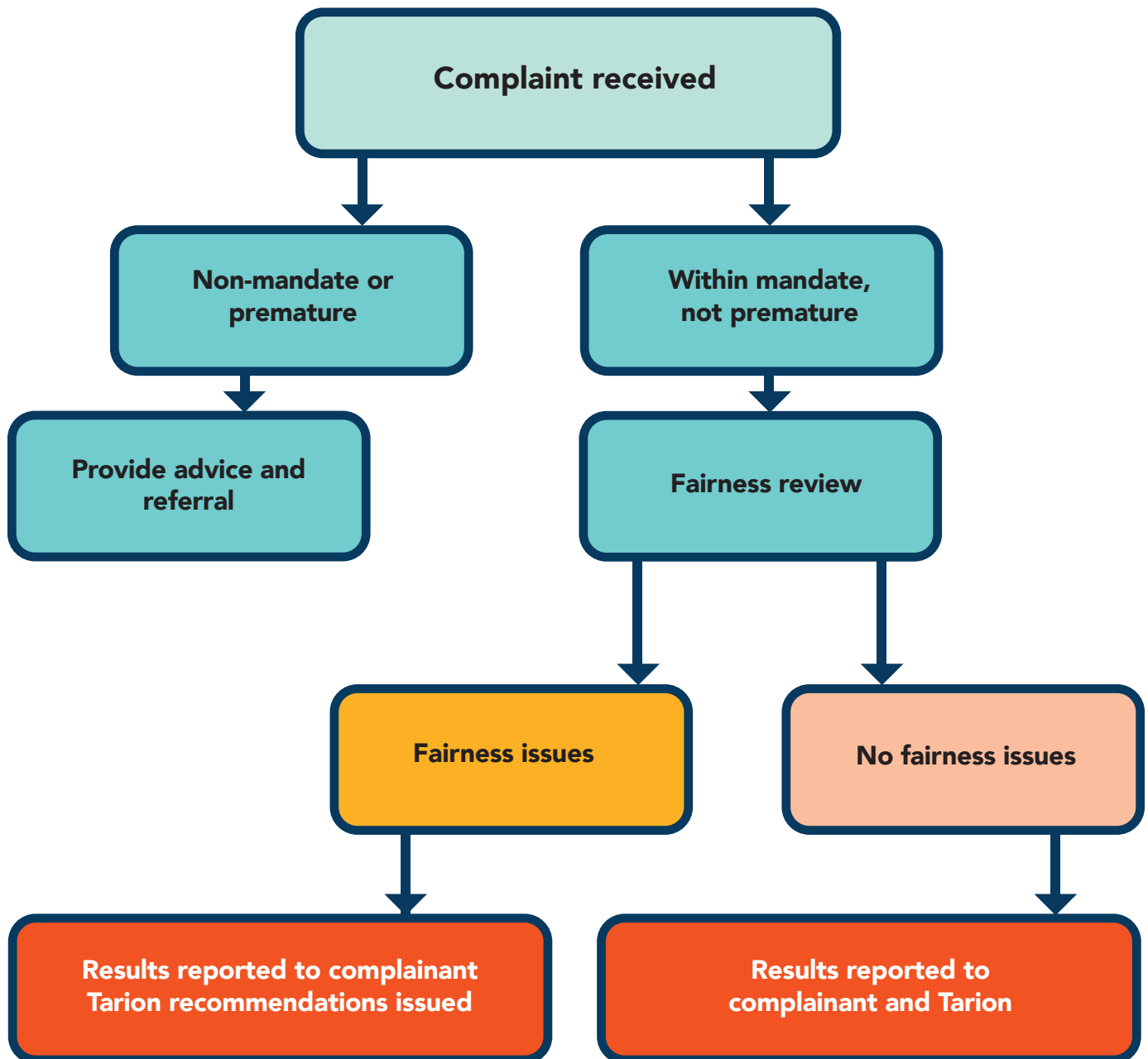
**We use a three-part test to determine whether fairness has been achieved.**



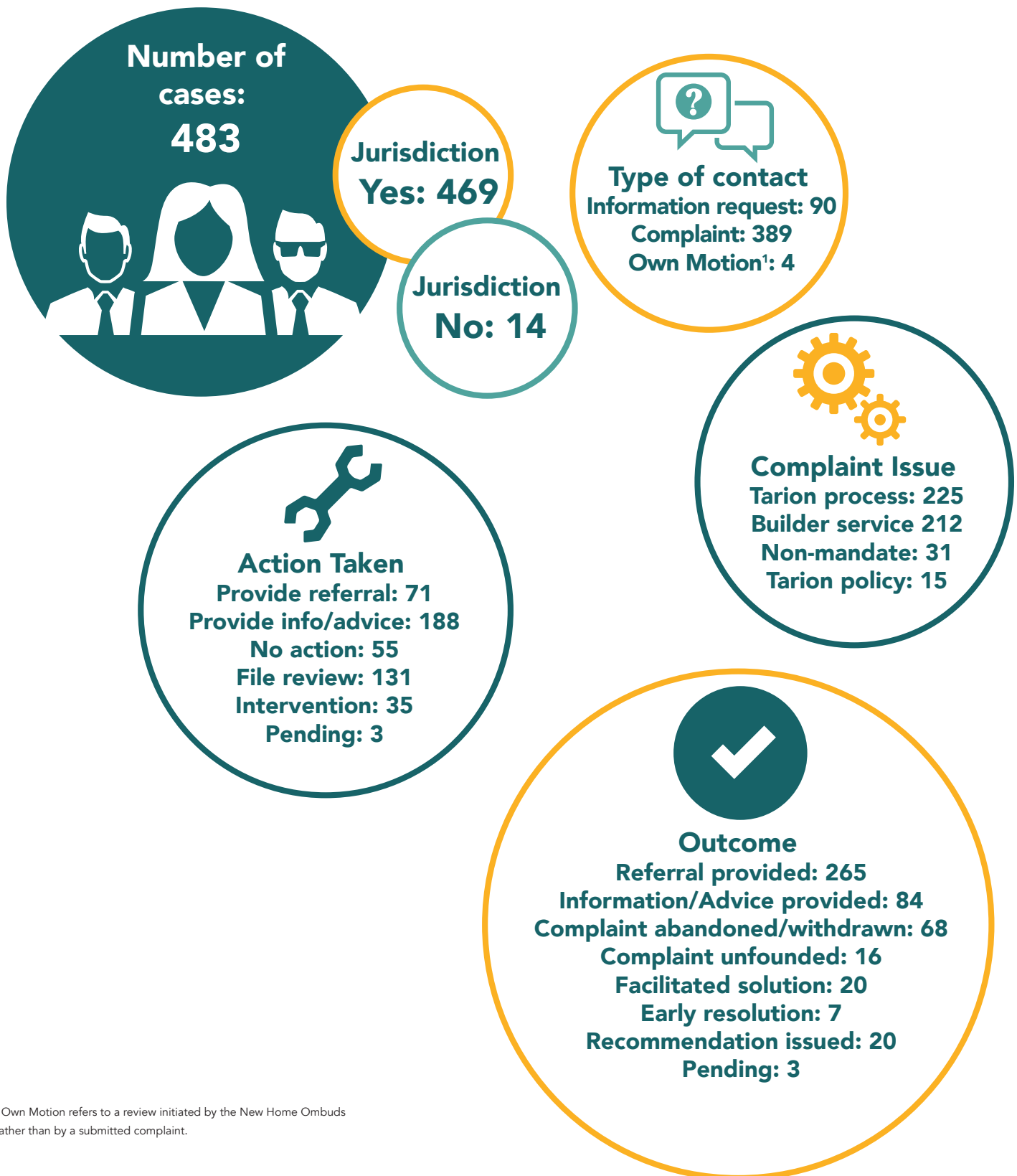
1. **Procedural** fairness: How was the decision made?
  - a. Did the homeowner have enough information to understand the process and to advocate for themselves?
  - b. Did Tarion provide reasons for the decision it reached?
  - c. Was the decision reached in a reasonable amount of time?
2. **Relational** fairness: How was the homeowner treated?
  - a. Did Tarion listen to the homeowner's concerns and address them?
  - b. Did Tarion treat the homeowner with respect and courtesy?
  - c. Did Tarion follow through on actions it promised?
3. **Substantive** fairness: What was decided?
  - a. Did Tarion have the authority to make the decision?
  - b. Was the decision based on complete and relevant information?
  - c. Was the decision wrong in fact or policy?

*“Ombuds staff are extremely professional and knowledgeable. Their intervention always makes a difference in resolving my concerns.”*

# What happens to your complaint?

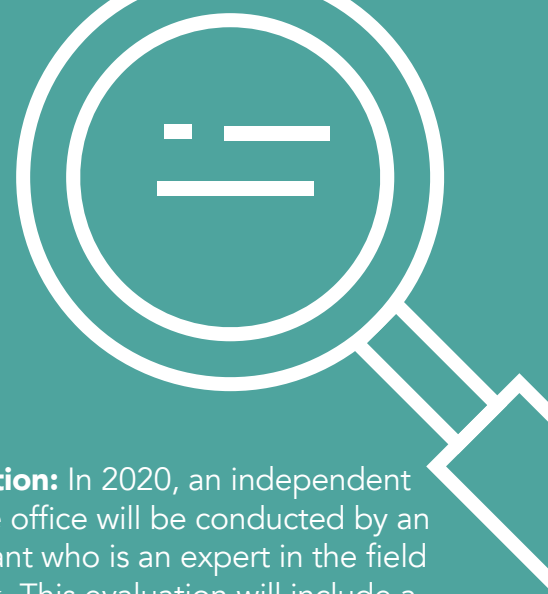


# 2019 at a glance



<sup>1</sup>Own Motion refers to a review initiated by the New Home Ombuds rather than by a submitted complaint.

# Demonstrating Independence



Independence is a key principle in all Ombuds work, whether it be a government mandated office like Ombudsman Ontario or an organizational office such as ours. Without independence from the organization that the Ombuds provides oversight for, it cannot do its job effectively.

For this reason, the New Home Ombuds office has always held our files separate from Tarion and when asked to release files to Tarion's legal department, the office has declined to do so. However, a question received at Tarion's Annual Public Meeting in May 2019 sparked a whole new look at how our office maintains and demonstrates independence. The question asked was in two parts: 1. whether our office discloses files to Tarion for the purposes of fighting homeowners at LAT and 2. how the public can be assured that we do not.

The answer to the first part of the question is no. In the 11 years that our office has been in existence, none of our files have ever been released either to Tarion, the courts, or any other party, either for a License Appeal Tribunal case or civil litigation. However, there has never been an external evaluation of the office, so we don't have independent validation of this statement.

As a result of this question, we began to explore ways in which the New Home Ombuds office can not only increase our independence from Tarion, but also how we can demonstrate that independence. We came up with several measures, as described here. Some of these have already been put in place and the rest will be implemented over the course of the next 6-8 months. They include:

**External Validation:** In 2020, an independent evaluation of the office will be conducted by an external consultant who is an expert in the field of Ombuds work. This evaluation will include a measure of the independence of the office as well as recommendations for improvements and best practices.

**Policy Changes:** The office will be bringing in changes to policy that will enhance the independence and confidentiality of the office.

**File separation:** We are currently developing processes to validate the independence of our files. Part of this process will be periodic internal audits to confirm that only New Home Ombuds staff access these files.

**Employment Administration Processes:** New employment reporting procedures have been put in place to make it explicit that employment administration for the office is outside of the authority of Tarion management. This independence measure is echoed by Recommendation 29 from the Auditor General's report.

**Legislation:** Changes to the Ontario New Home Warranties Plan Act that will result from Bill 159, if passed, will enshrine the office in the legislation, adding another layer of independence. Additionally, the office will be working to see that legislative changes follow the Auditor General's Recommendation 29 to preserve the confidentiality of the office.

The above measures will serve to increase the independence of the New Home Ombuds office. I will provide an update on their implementation in my 2020 Annual Report.

# Real people, real concerns

## case stories

### Reassignment Blues

Sometimes a homeowner has many concerns to report on a warranty form. In some cases, these concerns are complex, requiring assessments not only from Tarion staff, but also external contractors and engineers. There can also be seasonal issues that must wait for appropriate weather for assessment. For instance, Tarion can't make a warranty assessment about furnace issues in the middle of August.

Mr. P's claims had been impacted by all of these circumstances. He had many concerns with his home, several of them required additional assessment by outside experts and some were season specific. Mr. P came to the New Home Ombuds office because he believed that amid all the various inspections and assessments his concerns required, a number of his reported items had gotten lost in the claims process.

We reviewed this concern and discovered that, due to changes in Tarion staffing, Mr. P's warranty claims had been transferred to a new Warranty Services Representative. In the transfer process, some information had been missed and, as a result, some items had not been assessed. In addition, the standard timelines for resolution of these items had passed. This was a fairness concern.

The New Home Ombuds office identified which items were outstanding and outlined them for Tarion and the homeowner. We recommended that Tarion

apologize for this error, resolve the items even though the timeline had passed and expedite the resolution. We also recommended that, in the future, Tarion ensure that when there are staff changes, file reassignment is immediate, and that new staff thoroughly review the file to ensure they understand all of the homeowner's concerns.

### New Home Ombuds Delivers

One of the roles of our office is to help homeowners identify the next steps in working with Tarion. Whenever possible we send this information to homeowners in a summary email so that they have a clear record of how to proceed.

This past spring, Ms. C called our office to say she was confused about why Tarion had never followed up with her about her leaking roof, something she had reported on a warranty form three years prior.

Ms. C provided the New Home Ombuds office with permission to look at her Tarion file. We discovered that she had indeed sent the leaky roof concern in to Tarion on her year-end warranty form. However, she had never requested an inspection with Tarion, a required step that had been explained in the acknowledgment letter Tarion had sent her when they accepted her form.

Although the timeline for requesting an inspection was long past, we listened to Ms. C describe some of the struggles she had had with the leaks and with her builder, in general. The office helped her identify the departments at Tarion that could potentially help her with these concerns.

Although we normally follow up by email, Ms. C indicated that she doesn't have a computer and doesn't use email. In order to ensure that she was not disadvantaged due to her inability to access technology, we sent the information she needed to address her concerns via Canada Post.

***"Very helpful and very knowledgeable and very professionally answered to all my questions."***

## Waiting for a Response

The New Home Ombuds office received a complaint from Mr. L that his Tarion Warranty Services Representative was not returning his calls and emails. He explained that he had tried to leave messages for his representative in the past and that he would eventually receive a response, but it would sometimes take weeks of leaving email and voicemail messages.

Mr. L had received a settlement offer for his flooring issue and had questions about the way the issue was described in the settlement documents. When



he contacted our office, he had already tried leaving two voicemails and two emails for his warranty representative on the topic. And he had heard nothing back.

Mr. L provided our office with the permission to look at his Tarion file and to speak to the representative on his behalf. In our review, we found that the representative had indeed not responded to a number of the emails that Mr. L had sent. This was a fairness concern.

We confirmed the information Mr. L needed and followed up with the representative to request that she contact him. She called him that day and Mr. L reported that during this phone call all his questions were answered. He was satisfied and the fairness concern was remedied.

## Questions about Reimbursement

Mr. M had to move out of his home while a contractor completed structural repairs. Because the repairs were for warranted items, Tarion said he would receive \$150.00 a day as reimbursement for accommodation expenses.

After the repairs were completed, Mr. M wrote to Tarion to say that he had been out of his home for four nights. He did not receive confirmation that his email had been received. He wrote back a month later to see what was happening with the reimbursement and still did not receive a response. He waited another month and tried again. This time, Tarion responded and informed him that the funds were being processed.

Mr. M decided to call our office to express his concern about the amount of time it was taking to get the \$600.00 reimbursement. We identified that the payment had been delayed and found it unfair that Tarion had not responded to Mr. M's emails about this expense. Based on our recommendations, Tarion expedited the \$600.00 payment. They also apologized to Mr. M for the delay and lack of response to his emails.



*“The ombudsman office is quite awesome, intelligent and logical. They speak in plain English and make sense.”*

## New Home Ombuds as Coach

It is common for Our office to get calls from homeowners who are extremely frustrated and stressed. After all, one of our key responsibilities is to receive and review complaints. We listen with a neutral ear and help homeowners outline their concerns in a solutions-focused framework. Sometimes, we act as a coach.

One day, a call came in from a very angry homeowner. Mr. B explained, in an escalated manner, that he had tried to speak with a number of Tarion staff and he did not feel that they were addressing his concerns. He said that his

most recent interaction had ended with the Tarion staff member ending the call because he had been yelling.

Our office listened to and summarized Mr. B's concerns. He said that cold drafts were coming into his home during winter months. He also said that he has trouble managing his anger at times.

We explained that Tarion has a zero-tolerance policy on verbal abuse, defamatory or derogatory remarks directed at Tarion and or/its representatives. It makes sense that Tarion would end a call that included the homeowner yelling at staff.

During our conversation, we advised that Mr. B would need to manage his anger when interacting with Tarion. We suggested that if he felt that he couldn't verbally explain his concerns in a calm manner, he had the option to provide them in writing.

After the call ended, our office reached out to the Tarion staff who would be corresponding next with Mr. B. We advised that we had made the suggestion that he put his concerns in writing, and that, if he attempted a further phone call, he would be expected to manage his emotions.

Mr. B followed the suggestion to communicate through email and Tarion attended his home the following week to investigate the cold drafts. In this way, Tarion fulfilled a requirement for procedural fairness: providing an appropriate forum for an affected person to present their views and to be heard.

*"I have learned something new from the Ombudsperson during this process."*

## Decision Letters & Re-inspections

From day one, Mr. M's furnace gave off a banging noise whenever he turned the heat on high. He reported the concern and it was investigated as part of his conciliation inspection, but the furnace did not make noise while the Tarion representative was on site. Tarion went to the home twice to inspect during the winter months, and each time found the furnace to be functioning normally. They did not hear any unusual noise.

A Warranty Assessment Report for second-year items was issued and the furnace issue was not warranted. Mr. M requested a Decision Letter so that he could appeal the decision to the License Appeal Tribunal. The Decision Letter was issued, but unfortunately, due to health concerns, Mr. M was not able to pursue the License Appeal Tribunal application within the 15 days required by the Tribunal.

Once Mr. M. recovered, he requested that Tarion re-issue the Decision Letter and, as over a year had gone by since it was first issued, they had declined to do so. Our office spoke to Tarion and recommended that the letter be re-issued because we found that Mr. M's health issues presented a reasonable explanation for missing the 15-day window to apply to the Tribunal, and for the delay in requesting it be re-issued.

However, Mr. M was not satisfied with this remedy. He wanted Tarion to conduct a re-inspection of the furnace on a cold day, when he believed that the furnace banging would be evident.

Our office discussed this with Tarion and learned that they had already considered the option to re-inspect. However, they decided it would not be useful because two previous inspections had shown the furnace to be heating normally. As long as it was, the banging would not be considered a warranted item even if it was detected in an inspection.

Our office found Tarion's decision to not re-inspect was fair. In fact, it could have been considered unfair to provide a re-inspection, which would have raised Mr. M's expectations that the furnace might be warranted, even though it had been determined to be free of defects.

A new Decision Letter was issued, and Mr. M has the option to proceed to the Tribunal should he wish to challenge the decision to not warrant the furnace banging.

## Is My Conciliation Chargeable?

Mr. P contacted the New Home Ombuds office with a complaint about the Ontario Builder Directory. He was confused as to why his builder was not showing up with a chargeable conciliation. After all, items on his 30-day form had been found to be warranted. He wanted to see this acknowledged on the directory.

When we discussed the concern with Tarion, we learned that the builder had made a cash settlement offer that Tarion determined would have covered the costs to repair the warranted items. Tarion considered the settlement offer to be reasonable and to have fulfilled the criteria for an exception to chargeability as outlined in Tarion's Builder Bulletin 20. Our office found that Tarion's decision about chargeability had followed the required process and was fair.

However, we found a fairness concern with how the information about chargeability had been communicated to the homeowner. When Mr. P had asked Tarion for clarification about why his builder was not showing a chargeable conciliation on the directory, Tarion had failed to provide an explanation.

Our office recommended that Tarion provide Mr. P with a written explanation of exceptions to chargeability, particularly in relation to the builder providing a reasonable settlement offer. Tarion also apologized for their lack of communication and provided the information.

## No Inspection, No Decision, No Bias, No Fairness Concern

Mr. D sent a complaint form in to the New Home Ombuds Office, indicating that Tarion was biased because they were siding with his builder with regards to repairing a crack in his wall. He indicated that the crack ran from his foundation to the top of the home.

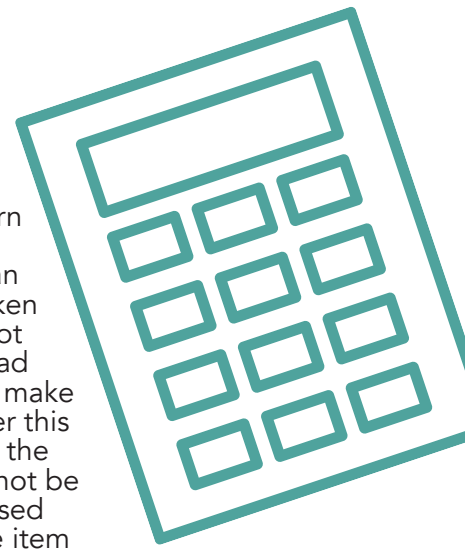
*“The Ombuds was highly professional, responsive and prompt.”*

When we reviewed the file, we found that Mr. D had included this concern on a Major Structural Defect form. However, an inspection had never taken place because he had not requested one. Tarion had never been called on to make a decision about whether this item was covered under the warranty, so they could not be said to have made a biased decision. And unless the item was found to be covered under the warranty, Tarion would have no authority to compel the builder to make repairs.

We explained the warranty process to Mr. D, noting that it is a legislative requirement that homeowners request conciliation if a builder does not address their concerns. Unless they do so, Tarion is unable to determine that an item is warranted and cannot compel the builder to address it.

*“I was worried that this was going to be a long, never-ending bureaucratic process but, was pleasantly surprised to find that it was instead a professional results-oriented procedure. The stress and upset I was feeling was greatly allayed.”*

Mr. D still had warranty coverage at the time of our review and so we clarified that he had the option to re-submit the item. He could then complete the required steps to determine whether the item would be covered under the warranty. If Tarion assessed the crack was not warranted, he would have the option to appeal to the License Appeal Tribunal, if he wished. We connected him with staff at Tarion who could provide him with further direction if needed.





## Tribunal Frustrations

There are times when the New Home Ombuds office gets complaints that are out of our jurisdiction. When this happens, we do our best to help identify where the homeowner can go for help.

Recently, we received a call from a homeowner who had submitted an application for appeal to the License Appeal Tribunal and who felt that the process was taking too long. She had tried contacting the Tribunal office and either got no response or was directed to staff who were not able to provide her with the information she needed. She contacted our office asking for help.

Since the Tribunal is a distinct provincial agency, completely separate from Tarion, this was clearly outside of our scope. As the Ontario Ombudsman is authorized to review complaints about provincial tribunals, we provided the homeowner with a referral to their office.

## Put it in Writing

Ms. T had reached out to Tarion to find out if her home was eligible for warranty coverage. She was confused and frustrated to find out that Tarion had determined that the work on the home was considered a renovation and not a new build. Therefore, the home was not covered under the Ontario New Home Warranties Plan Act.

When our office reviewed the file, we found that Tarion had provided a written correspondence to inform Ms. T that her home was not covered.

However, the correspondence did not include two important components: written reasons for the decision and information on her right to appeal through the License Appeal Tribunal. This constituted a fairness concern.

***“I think the Early Resolution Officer is very good at her job and I really thought she did exceptionally well considering the case.”***

The New Home Ombuds recommended that Tarion provide reasons and appeal information to Ms. T and Tarion agreed.

Tarion communicated to Ms. T that the home was not eligible because the pre-existing foundation was used in the build and, although additional new foundation was poured, it was not enough to place the home in the category of a new build. Ms. T responded to Tarion to indicate that the information they had was incorrect, that the entire original foundation had, in fact, been demolished and a new one poured. As a result, Tarion agreed to reconsider their decision.

**For more stories about real homeowners, visit our website at [newhomeombuds.ca](http://newhomeombuds.ca)**



# Recommendations

An Ombuds office makes recommendations to alert an organization to fairness issues and to suggest redress. Although Tarion has no legal obligation to follow the New Home Ombuds recommendations, there have only been two instances since the office was opened in 2008 when Tarion declined to implement a recommendation. All other recommendations have been accepted and implemented.

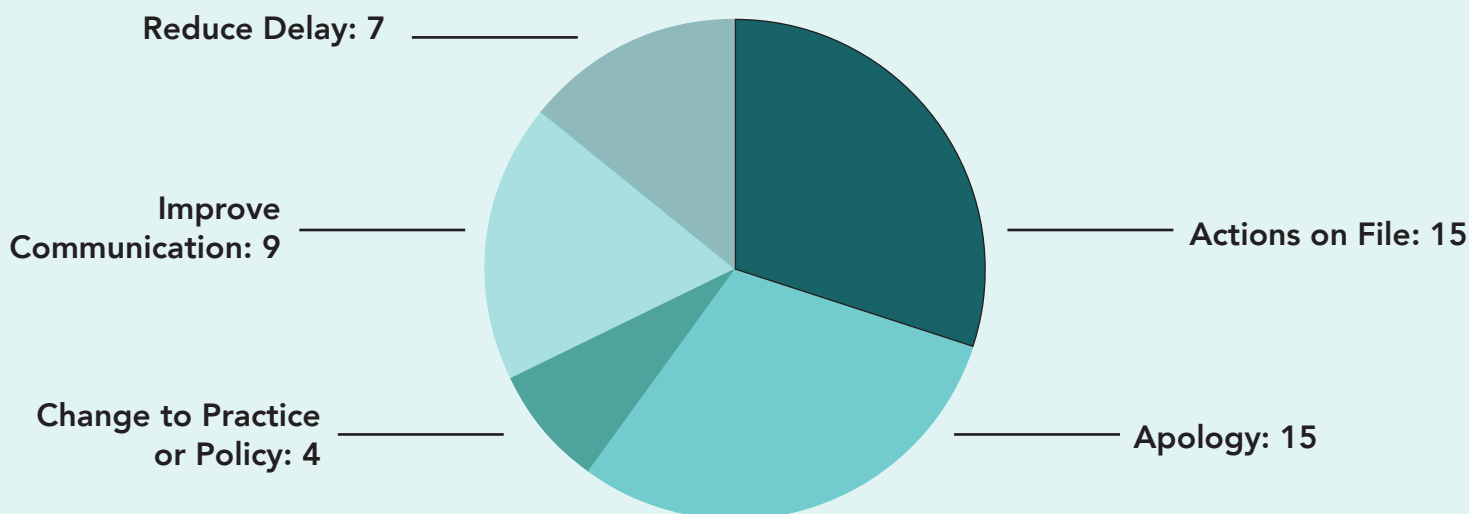
## Case Specific Recommendations

When the New Home Ombuds office reviews an individual file and determines that there have been 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 error and an apology. In 2019, the office made recommendations in 20 individual cases.

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

### 2019 Recommendations



## Systemic Recommendations

### Follow up on 2018 Systemic Recommendations

As part of the 2018 Annual Report, the New Home Ombuds made three recommendations involving the scheduling of inspections, illegal builders performing repairs and the information available on the Ontario Builder Directory. All three of these recommendations have been fully implemented.

## New Home Ombuds Systemic Recommendation 2019

### Systemic Recommendations already implemented

As a result of issues identified in reviewing individual cases, the New Home Ombuds made systemic recommendations in two areas: deposit claims and condominium enrollment.

**Deposit Claims:** Previously, when processing deposit claims, Tarion staff had not explicitly informed homeowners at the beginning of the claim review, that information they provide would be shared with builders. Fair process requires that Tarion let homeowners and builders know that information they share with Tarion will be provided to the other party. Our office recommended that Tarion change their process to remedy this, and homeowners are now so informed.

**Condominium Enrollment Process:** The review of a file involving a condominium that was incorrectly enrolled resulted in recommendations for changes to the condo enrollment process. Tarion now has a second check system in place to ensure that all condominium projects are enrolled accurately.

### New Systemic Recommendation

The Auditor General's report on the Value for Money Audit of Tarion made 32 wide ranging recommendations. We support Tarion's implementation of these recommendations and in light of them, will be making only one new systemic recommendation as part of our Annual Report. This recommendation ties in with those of the Auditor General that are geared toward ensuring that builders are held accountable for their performance.

At the current time, Tarion remains responsible for licensing builders, as well as for backstopping the warranty, and therefore they continue to hear homeowner complaints about builder conduct. When Tarion receives these complaints, they are divided into two categories, those that a) involve potential illegal activity, threats or intimidation, and b) those

that involve less serious conduct, such as poor customer service or unfair business practices.

Tarion takes builder conduct complaints seriously and reviews them all. However, currently Tarion has no coordinated system for reporting, reviewing and tracking complaints in the b) category. This makes it difficult to determine if a builder is exhibiting a pattern of behaviour that is serious enough to warrant action regarding their registration. Examples might include a builder frequently scheduling and then canceling repair work or a builder repeatedly using substandard trades for repairs. These are issues that Tarion should be aware of and should consider at renewal time, but currently there is no central repository for this information, which Tarion may be receiving from several different sources.

Therefore, the New Home Ombuds recommends that Tarion develop a means of tracking all builder complaints. This system should include:

- a) Tracking of complaints that are not serious enough to warrant immediate action on their own, but that as part of a pattern of behaviour could raise concerns about a builder's registration.
- b) Monitoring to ensure that concerning patterns of behaviour are noted.
- c) Reporting to the Stakeholder Relations Department for the purposes of builder education as appropriate.
- d) Reporting to the Licensing and Underwriting Department for use in determining appropriate action when renewing builder licenses.
- e) Development of a method for providing all builder conduct information on file to the new Home Construction and Regulatory Authority when they assume authority for builder licensing.
- f) Training for staff from all Tarion departments on how to respond to builder conduct complaints.

***“Continue the good work that you are doing.”***

## Management Response

Part of the mandate of the New Home Ombuds 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 2019 New Home Ombuds Annual Report.

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

Tarion accepts the New Home Ombuds recommendation.

### **Implementation plan:**

Tarion will hold inter-departmental discussions and work together to develop a system to track all builder complaints.

Timing for the inter-departmental discussions to take place: end of February 2020

The new complaints tracking system will encompass all the points included in the recommendation.

Tarion will also work to develop an interim process to ensure all builder conduct related complaints are monitored and tracked.

Timing for the development of the interim process which will be discussed with the New Home Ombuds prior to implementation: end of Q1 2020.

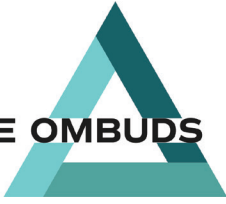
Tarion will develop a proposal for the complaints tracking system and hold discussions with the New Home Ombuds for feedback.

Timing for the development of the proposal and discussions with the New Home Ombuds: end of Q2 2020.

Timing for the development and implementation of the tracking system: end of Q3 2020.

Timing for training of all staff on how to respond to builder conduct complaints: end of Q3 2020.

NEW HOME OMBUDS



# Let Us Help

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



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

## New Home Ombuds Office

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