

2020 ANNUAL REPORT

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Message from the New Home Ombuds

2020 was a Unique Year

Over the past year our lives have been disrupted in ways both big and small. Working remotely, home schooling, separation from loved ones; it has been difficult.

When the first Emergency Order was declared by the provincial government in March 2020, and it became clear how much the pandemic would be affecting the work of Tarion, I anticipated that the volume of complaints to our office would increase dramatically. To my surprise, this did not happen. For the most part, Ontario's new homeowners remained calm and took the pandemic related delays in stride, demonstrating patience and an understanding that the situation was bigger than all of us.

Although we did not experience the tsunami of complaints I anticipated, the work of the office has continued. 518 people contacted the office in 2020, and we were able to assist many of them by providing information or a referral, or by helping them to determine next steps for resolving their concerns. Some issues required us to review the homeowner's file to determine whether Tarion's handling of their case was fair and, if not, to clarify what action was necessary to remedy the error.

As an organizational ombuds, we have a distinctive role that includes both exerting cooperative influence and calling Tarion out when needed. As an "insider/outsider" we are uniquely placed.

We have the authority to work independently yet can access internal information and staff at all levels of the organization. This has fostered an in-depth understanding of Tarion's processes and policies that enables us to quickly determine when a mistake has been made, or a policy breached.

The role of the New Home Ombuds is not to act as an advocate for homeowners, but rather to advocate for fairness. By ensuring that Tarion follows the spirit and intent of the *Ontario New Home Warranties Plan Act* and by making recommendations to remedy errors, we are doing our part to ensure that homeowners are treated fairly.

I would like to thank all the homeowners who shared their stories with us over the past year. It has been a privilege to work with you. Thank you to the Tarion staff who responded to our questions openly and worked collaboratively with us to find solutions and remedy for homeowners. And finally, thanks to the staff of the New Home Ombuds office for remaining optimistic and professional in the face of challenges.

Let's all hope for a better 2021.

Jill Moriarty, New Home Ombuds

What we do

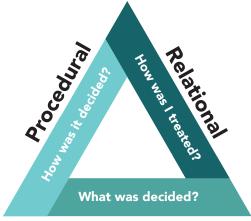
The mandate of the New Home Ombuds is to:

- Investigate and resolve complaints from homeowners about Tarion's conduct
- Act as a source of information, to help homeowners in getting assistance from Tarion
- 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. We also investigate systemic issues and make recommendations to change policies and procedures when needed.

How we do it

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

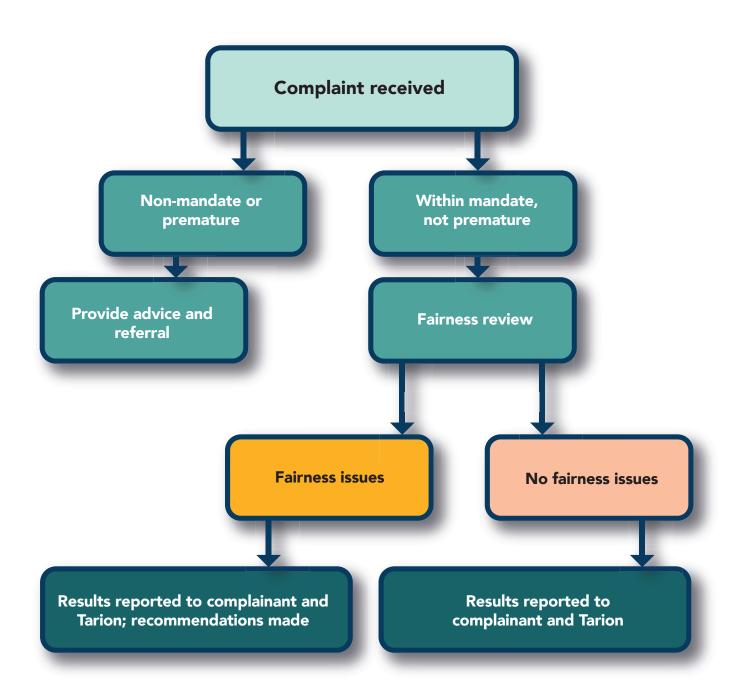


Substantive

"The Ombudsperson was empathetic and listened to my story."

- 1. Procedural fairness: How was the matter decided?
 - a. Did the homeowner have enough information to understand the process and 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?

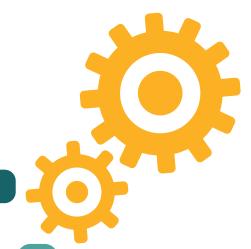
What happens to your complaint?



Total Contacts: 518 Contact Type: Complaint: 383 Information Request:132 Own Motion¹: 3

Contact Issue:

Tarion Process: 262
Builder Services: 166
Non-Mandate: 56
Builder Conduct: 16
Tarion Policy: 12
Ombuds Office: 3
Other/Unknown: 3



2020 at a glance

Outcome:

Premature: 294
Referral: 111
Abandoned by Complainant: 50
Facilitated Solution: 24
Recommendation: 13
Complaint Unfounded: 14
Ombuds Withdrew: 7
Advice to Complainant: 2
Complaint Withdrawn: 2
Cases Pending: 1

Action Taken: Provided Information: 305

File Review: 80
Provided Referral: 69
No Action Taken: 25
Fairness Review: 10
Inquiry: 10
Intervention: 9
Provided Advice: 7
Provided Coaching: 2

Cases Pending: 1



Financials: The New Home Ombuds office budget, approved by Tarion's Board of Directors, was \$381,007 for the fiscal year ending December 31, 2020.

1Refers to a review initiated by the New Home Ombuds office

Independence Update

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.

The 2019 Annual Report outlined measures the New Home Ombuds office is taking to demonstrate and increase our independence from Tarion. Below is a description of the progress made in this area over the year.

External Evaluation: In 2020, the New Home Ombuds office brought in an external consultant to conduct an evaluation of the effectiveness of the office. The evaluation is in progress and will determine our compliance with our Terms of Reference, the Forum of Canadian Ombudsman's Statement of Ethical Principles and the Ombudsman Association's Principles of Good Complaint Handling. This evaluation will include a measure of the independence of the office and recommendations for improvements and best practices.

Policy Change: The office is no longer bound by Tarion's Access to Information and Privacy Policy. We now have a separate Privacy Policy, which outlines our confidentiality, access to information and file retention standards. The New Home Ombuds Privacy Policy is posted on our website and can be viewed by clicking here.



File Separation: The New Home Ombuds database has been housed on a separate cloud server since 2017. In 2020 we moved all Ombuds files and email to an external cloud provider.

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. Performance review of the Ombuds staff is conducted by the Ombuds and the Ombuds' performance is reviewed by the Board. The Ombuds cannot be terminated by management and cannot be dismissed as a reprisal for recommendations or criticism of Tarion made in good faith while fulfilling their job function. Any complaints of impropriety regarding the Ombuds are addressed by the Board and not Tarion management.

Legislation: Throughout the year, the office has been in discussion with the Ministry of Government and Consumer Services regarding changes to the *Ontario New Home Warranties Plan Act* and related regulations which affect the Ombuds office. The revised Act came into effect on February 1, 2021 and includes a statutory requirement for Tarion to make an Ombudsperson available to homeowners. In addition, we have actively consulted with the Ministry on the duties of the New Home Ombuds and the responsibilities Tarion has to the office.

We will continue to strive for maximum The New Home Ombuds office has achieved a high level of structural independence. We will strive to continue this independence while maintaining our unique ability to review Tarion's actions through direct access to Tarion files, information and staff.

Real people, real concerns

case stories

No Response from Tarion

Ms. P contacted the Ombuds office to report that she had sent Tarion an email 3 weeks prior and had not yet received a response to her concerns. She had received an automated reply which stated that she would hear further from Tarion within 72 hours. This had not happened.

Ms. P provided Ombuds staff with permission to contact Tarion about her concern and we learned that there were recent departmental changes which were affecting the response time for this department.

Tarion recognized that as a result of the transition, Ms. P's email had been missed in error. Tarion responded to Ms. P

immediately, apologized for the delay, and addressed her concerns.

However, this issue affected more than an individual homeowner. The Ombuds office was concerned that Tarion's automated message was giving an incorrect timeline that set unrealistic expectations for homeowners. We discussed our concern with Tarion, and they acknowledged that this was a systemic issue. They determined a realistic timeline and updated their automatic response to accurately reflect when the homeowner could expect a reply.

"They answered all my questions"

Homeowners should be aware that sometimes the concern that they experience is an indicator of a systemic error that needs to be addressed. Because Ms. P brought her complaint to Ombuds, we were able to identify and address inaccurate information that was being provided to homeowners.

Mould SOS

Mr. N called us to say that he had informed his builder and Tarion about mould in his home but that Tarion was not taking any action to assist with the situation.

When the Ombuds office reviewed the matter, we discovered that Tarion had actually been working diligently behind the scenes to help the homeowner with his mould issue. They had contacted the builder to inform them that the mould was an issue that Tarion required them to investigate and Tarion had confirmed that the builder had contracted an engineer to investigate and identify the cause of the mould.

The problem? Tarion had not informed the homeowner of their actions. To the homeowner, it appeared that Tarion had done nothing at all and that their mould issue was being ignored.

Lack of communication is a procedural fairness concern that leaves homeowners in the dark about what is happening with their warranty claims. As remedy for this fairness issue, we recommended that Tarion provide Mr. N with a clear, written summary of the next steps in resolving his warranty claim and that they apologize for the lack of communication.

Communication Confusion

Mr. M got an email from his Warranty Services Representative about an inspection that was scheduled to take place the following week. Mr. M had no idea what the inspection was about and when he called the Warranty Services Representative to find out, he was told to look at his Warranty Assessment Report for an explanation.

Mr. M called the Ombuds office frustrated and confused. He could not find the information his representative was referring to and he believed he was not getting a clear answer from Tarion.

When the Ombuds office reviewed the file, we learned that the purpose of the inspection was to review a water penetration item from Mr. M's first year form. When the original first year inspection took place, the ground had been frozen and Tarion was unable to assess whether there was an active leak.

The initial first year Warranty Assessment Report had been issued, but we found that Mr. M's confusion made sense. The report did not **Ombuds** staff mention the need for the

were very helpful in explaining and advising me on what I needed to do - even sending an email summarizing our discussion. They were very professional, clear and sympathetic.

After speaking with the Tarion representative, we discovered that the explanation about a re-inspection had been left off the report in error. The representative apologized to Mr. M for the oversight and sent him

additional assessment.

an email to provide the information that should have been included in the report.

Pandemic Upheaval

2020 brought new and challenging obstacles to overcome in our daily lives. Normal activities halted when the world had to deal with the growing threat of COVID-19. In a flurry of information coming from Public Health Officials and the changes being implemented to stop the spread of this virus, we sometimes forget things we normally would remember. This was the case for Mr. R.

At the end of April 2020, Mr. R contacted the New Home Ombuds Office, frustrated that Tarion had rejected his request to schedule a conciliation inspection on his warranty claim because the request was late. At the time that he was to have made the request, not only was Mr. R managing an early transition to working remotely but also caring for a newborn infant. Although he was working with his builder on some of the issues, Mr. R was worried that once the pandemic was over, his builder would not follow through on their deal and he would be left to address the repairs himself.

Mr. R hoped that Tarion would acknowledge the pandemic/newborn upheaval that was going on at the time he was expected to request his inspection and grant him an exception to the strict timelines.

Our office put Mr. R in contact with Tarion's Director of Customer Service to discuss his situation. As a result, Tarion acknowledged Mr. R's circumstances as exceptional and accepted his request for inspection.

Form Frustration

Mr. L's first experience with Tarion turned out to be a frustrating one when he had trouble submitting his 30-Day form online through the MyHome portal. When attempting to submit the form, Mr. L was only given an option to "save" the document. Knowing his deadline was fast approaching, he called Tarion's Customer Service department repeatedly, only to be put on continuous hold. He reported that he eventually reached a voicemail but then received a computer message saying his voice could not be heard. Utterly confused, and worried about the submission timeline, Mr. L contacted to the Ombuds office

Our office reviewed Mr. L's concerns and met with a Tarion Customer Service manager. During the discussion, we learned that interim measures to the MyHome portal had been implemented that very day to fulfill a recommendation customer service from the Auditor General. Homeowners were now being from Ombuds given a 10-day grace period on submission of 30-Day forms. This grace period allows homeowners to change or add items on the form for 10 days following the submission deadline. In order to accommodate the grace period, Tarion changed the submission process so that homeowners are able to save changes to the form but not submit it. At the end of the grace period, the form is automatically submitted to Tarion and a confirmation letter is sent to homeowners outlining next steps in the warranty process.

Tarion confirmed that Mr. I's form was submitted on time and that this would be clarified in a letter that would be sent when the form was auto submitted. Until that time, Mr. L was free to make changes or additions to the form. After our meeting with Tarion, the Ombuds office provided Mr. L with communication and clear direction on the next steps.

Noise Nuisance in the **Home Office**

Ms. T called the Ombuds office exasperated by a continual vibration noise that was permeating throughout her house coming from a "party wall" shared with her neighbor. As she was working from home due to the pandemic and exposed to the noise 24/7, the problem was intensified. She had already included the concern as an item on her 30-Day form and had talked to Tarion about it but since she was only halfway through the builder repair period, it was too early for Tarion to assess it.

Ms. T reported that she had a home inspector investigate and his opinion was that there were Ontario Building Code violations in the wall construction. She spoke to her builder who denied that there were any Ontario

"Great

staff."

Building Code violations. He stated that he did not believe there were any defects or warranty violations in the wall construction and he would not be doing any further work on it. Ms. T realized that the concern might not be covered by the warranty but felt that the issue must be addressed and she

preferred to have Tarion make a warranty determination before she paid for repairs herself.

Normally, Ms. T would have to wait for the full 120-day builder repair period to be completed before she could request a Tarion inspection. However, because the builder had pro-actively stated that they would not be addressing the concern, the Ombuds recognized that this was a unique circumstance. We spoke to Tarion and, after reviewing the file, they decided to abridge the repair period for this one item on the 30-Day form. Tarion contacted Ms. T and began the process of contracting with a 3rd party expert to investigate the wall construction so that Tarion could determine warrantability.

Photo Fairness

Mr. K had reported several defects on his Year-End statutory warranty form. When the builder came in to do the repairs on some of the items, Mr. K asked the builder to allow him to take photos prior to the repairs starting, so that he would have an accurate record of the defect. The builder suggested instead that Mr. K just look at the pictures the Tarion representative had taken at the conciliation inspection.

Mr. K was confused. As far as he knew, he had no access to view the photos and wondered why the builder did. The builder told him that he had viewed the photos through BuilderLink, the builder's online portal.

Mr. K contacted the New Home Ombuds because he was frustrated that Tarion was allowing builders to view inspection photos, but not homeowners. When our office reviewed the file, we discovered that because the homeowner's portal, MyHome and the Builder's portal, BuilderLink, were set up at different times, they had different functionalities. BuilderLink was the more recent system and at the time it was designed, it had become common for Tarion inspectors to use phone cameras to take photos during the inspection and then upload them. The BuilderLink portal was designed to take advantage of this new process whereas the My-Home portal, designed before this was common practice did not incorporate photo access.

Our Office considers it a fairness concern that builders are able to access photos and homeowners are not. In order to correct this situation, we recommended that the Warranty Services Representative send electronic copies of the photos to the homeowner. We also opened an Own Motion inquiry to look further into our concerns around the availability of photographs from inspections. You can read about this inquiry on in the section on Systemic Recommendations.

For more stories about real homeowners, visit our website at www.newhomeombuds.ca.

"Staff went out of their way to answer my questions and transferred me to where I needed to be.

They even got back to me to ask if my questions had been answered."

"I was completely satisfied with the service I received. You guys should give courses on proper customer service."

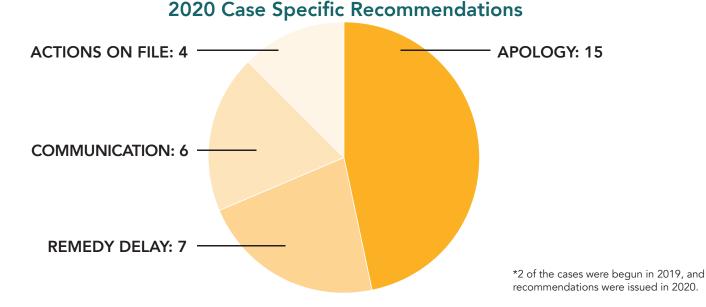
"Thanks for the great experience!"

Recommendations

An Ombuds office makes recommendations to alert an organization to fairness issues and to suggest redress.

Case Specific Recommendations

When the New Home Ombuds office reviews a complaint and determines that there have been fairness issues in Tarion's handling of the file, we will make recommendations for individual remedy. The recommendation may be for an action on Tarion's part, such as considering a re-assessment, improving communication or providing additional information to the homeowner. It can also be for a simple acknowledgment of error and an apology. In 2020, the office made case specific recommendations in 15* individual cases.



All case specific recommendations made in 2020 were accepted by Tarion and have been implemented.

Systemic Recommendations

In some cases, the review of a complaint may reveal not simply an individual error on Tarion's part, but a systemic issue that needs to be addressed on a broader level. In these cases, we will make systemic recommendations in addition to the recommendations for individual remedy.

In 2020, the office made two systemic recommendations that came out of individual complaint reviews and one that resulted from an Own Motion Inquiry.

The review of an individual complaint might also raise concerns about a potential systemic issue that requires further investigation. In this situation, the office will initiate an Own Motion inquiry to look more closely at the concerns and determine whether a recommendation needs to be made. In 2020, one Own Motion inquiry we initiated as a result of individual complaints led to a systemic recommendation.

Follow up on 2019 Systemic Recommendations

As part of the 2019 Annual Report, the New Home Ombuds made a systemic recommendation regarding the tracking and monitoring of builder conduct complaints. As a result of this recommendation, Tarion revised their process for receiving, tracking and monitoring builder conduct complaints, ensuring that all of the complaints are received and tracked centrally. The 2019 systemic recommendation has been fully implemented.

New Home Ombuds Systemic Recommendations for 2020

Documentation

The New Home Ombuds made two systemic recommendations as a result of issues identified when reviewing individual cases. These both involved Tarion taking measures to ensure that staff were aware of, and coached in, the appropriate documentation of case files.

Both recommendations were accepted and have been fully implemented.

Photo Availability

As outlined in the Case Story "Photo Fairness", a complaint in 2020 brought to our attention a systemic fairness issue regarding access to photos taken by Tarion staff at conciliation inspections. We discovered that builders are able to access these photos through the BuilderLink portal, but that homeowners have no such access through the MyHome portal. We determined this to be a fairness issue.

We initiated an Own Motion inquiry to explore how this situation came about and how it could be remedied. Our inquiry revealed that homeowner and builder portals had been developed at different times, with MyHome having been developed first, before uploading photos to the case management system was standard practice. The discrepancy between the two portals was a result of the way photos were used at the time that each portal was developed.

In order to ensure that homeowners have the same access to inspection documentation as builders, the New Home Ombuds recommends that:

- 1. Tarion develop the means to ensure visual documentation from all inspections, whether in video, photos or other formats, be made available equally to both homeowners and builders.
- 2. Tarion ensure any new inspection technologies that are utilized are capable of being shared equally with both parties.





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 2020 New Home Ombuds Annual Report.

Tarion accepts the New Home Ombuds recommendation.

Implementation plan:

- 1. a) Warranty Services will hold discussions with the New Home Ombuds to discuss possible methods to ensure that photos or videos are equally accessible to both homeowners and builders.
 - Timing for the discussion: end of February 2021
- 1. b) Warranty Services will share any photos we have with a homeowner when requested.
 - Timing for the implementation of the sharing on request process: end of February 2021
- 2. The larger issue identified relates to the computer systems currently in place. In 2021 Management will undertake to develop a costing and timing proposal for building a technology solution to resolve the issue identified by the Ombuds namely creating a way for homeowners to have access through MyHome to the same photos the builder may have access to on BuilderLink.
 - Timing for these initial discussions: end of Q1 2021.

Further timelines will be set after those initial discussions take place and an update will be provided to the Ombuds with respect to our progress.



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.

New Home Ombuds Office

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