

NEW HOME OMBUDS



New Home Ombuds Report on the Implementation of the Auditor General of Ontario's Recommendations Related to the Office

Final Update

October 25, 2021

On October 31, 2019, the Auditor General published her report on the Special Audit of the Tarion Warranty Corporation. Among the thirty-two recommendations were two that involved the Ombuds office, Recommendation #24 and Recommendation #29. This report provides an update on how these recommendations have been addressed.

Recommendation 24

In her review, the Auditor General found that Tarion had not always fully resolved the recommendations made by the office in our Annual Reports. As a result, she made the following recommendation:

To resolve issues identified by the Ombudsperson's Office of Tarion Warranty Corporation, we recommend that Tarion work directly with the Ombudsperson's Office to:

- *Fully resolve all issues raised in the Ombudsperson's public reports since 2008; and*
- *Post the results of this review on Tarion's website.*

The ten Annual Reports published by the Ombuds office between its inception and the Auditor General's review contained a total of thirty-eight systemic recommendations. The implementation of the Auditor General's Recommendation #24 began in November 2019, with the Ombuds conducting a review of all thirty-eight recommendations.

We determined that there were thirteen recommendations that had either not been fully implemented or that had initially been implemented but which did not continue to be satisfactorily implemented, due to subsequent changes in process.

On November 15, 2019, we provided Tarion with a report on our review of open recommendations. In early January 2020, we met with Tarion to discuss our findings and to ensure that they understood our concerns with the incomplete recommendations. In late January 2020, we met with Tarion again to further discuss the recommendations and to determine the steps needed to satisfy them.

Tarion has been working to resolve these recommendations and the attached spreadsheet (Appendix A) outlines the recommendations that were incomplete on November 15, 2019, our concerns with them and the actions Tarion has taken to address them. As of October 25, 2021, all recommendations have been implemented.

Tracking of Recommendations

In 2015, the Ombuds recommended that Tarion develop a system for tracking the implementation of Ombuds recommendations. Tarion implemented this recommendation by developing a central tracking system for all Ombuds recommendations received by Tarion. This system includes quarterly reporting on implementation to the Stakeholder Committee of the Board of Directors. Since this tracking system was put in place, there has been only one recommendation not fully implemented.

However, in light of the Auditor General's recommendation, and to ensure that all future recommendations are appropriately tracked and implemented, the Ombuds office has begun monthly audits of the status of all recommendations.

Recommendation 29

In her review, the Auditor General found that the Ombuds office did not operate with appropriate independence from Tarion management. She made the following recommendation:

To establish and maintain the internal Ombudsperson's Office's formal independence from senior management of Tarion Warranty Corporation, we recommend that:

- *The Ombudsperson's Office report directly to Tarion's Board of Directors (Board) on all operational matters, including budget and salary approvals;*
- *The Board review the performance of the Ombudsperson's Office;*
- *Tarion management abstain from any role or involvement in evaluating or reviewing the performance of any employee of the Ombudsperson's Office; and*
- *Tarion work with the Ministry of Government and Consumer Services to add a provision in the Ontario New Home Warranties Plan Act that prevents Tarion from accessing any information in the homeowner's files held by the Ombudsperson's Office.*

Since the release of the Auditor General's report, Tarion's management and human resources department have had no role in the employment of Ombuds office staff. Hiring, salary negotiation and performance review of the Ombuds position is addressed directly by the Stakeholder Committee of the Board. The hiring, salary negotiation and performance review of other positions in the Ombuds office are addressed by the Ombuds.

The budget of the office is negotiated directly between the Ombuds and the Stakeholder Committee of the Board with no direction from Tarion management.

In 2020, the Ombuds office approached the Ministry of Government and Consumer Services directly to suggest that provisions be added to the *Ontario New Home Warranties Plan Act* to ensure that any information collected by the Ombuds staff in the course of performing their duties are unable to be accessed by any party. The Ministry declined to include this provision in the legislation but did ensure that the Administrative Agreement between Tarion and the Ministry includes a clause that ensures Tarion does not access any files or records of the Ombuds office.

Independence Measures

In addition to the recommendations of the Auditor General, the Ombuds office has introduced further measures to increase the independence of the office from Tarion. Some of these measures include:

- Moving to a separate file storage system from Tarion so that all Ombuds files, documents and emails are stored securely outside of Tarion.
- Developing separate policies for the office in the areas of receiving conflict of interest and staff conduct complaints and addressing privacy/confidentiality.
- Contracting for an external evaluation of the office to audit its compliance with the independence and confidentiality clauses of the office's Terms of Reference and the Forum of Canadian Ombudsman Statement of Ethical Principles. The results of this evaluation can be found [here](#).

APPENDIX A - Ombuds Annual Report Recommendations

Year and Recommendation Title	Wording of the Recommendation	Ombuds Concern with the Recommendation	Status	Target Date for Completion
AR 2009 - complaints to VP customer service (late warranty forms and requests for inspection)	That the complaint process for exemptions to late form submission and late requests for inspections be formalized and made public. That the criteria as to what constitutes exceptional circumstances be clarified along with the fact that Tarion may require documentation to support a claim of exceptional circumstances. That the complaint process has a specific timeframe for responses and a requirement that Tarion provide reasons for its decisions.	Ombuds concern with this recommendation was that the exception process for accepting late forms and requests for inspection had been formalized, but not made public. This has since been remedied and information on this process is now available on Tarion's website. This recommendation has been implemented.	Complete	June 15, 2020
AR 2010 - Best Practices for Chargeability	In order to ensure that decisions are accurate and transparent, Tarion should identify and develop best practices for what determines a chargeable conciliation. These practices should include consulting with homeowners to verify that information provided by the builder is accurate and understanding if there are any mitigating circumstances that Tarion should be aware of in making its determination.	Tarion implemented this recommendation in 2011, but the process of consultation with homeowners was dropped at some point. Tarion has since revised its process for chargeability to ensure that homeowners are consulted, and all Warranty Services staff are now trained in the revived protocol. This recommendation has been implemented.	Complete	June 15, 2020
AR 2011- Plain language focus	That Tarion develop and adopt corporate standards for best practices in plain language communication. That Tarion incorporate these standards into corporate communications. That Tarion develop or adapt tools to support clear communication and make resources and training available to staff. That staff be encouraged to incorporate clear communications principles into their daily work.	Following this recommendation, Tarion implemented a Plain Language format for homeowner communication. However, in 2016 there were changes made to the initial Welcome letter to homeowners that decreased its readability. This letter has now been revised and meets Plain Language guidelines. This recommendation has been implemented.	Complete	June 15, 2020

AR 2012 Opportunities for improvement	<p>Improve decision making. Understand fairness. Reduce unnecessary delays. Improve internal communication about cases. Hear from both sides of a dispute before making a decision.</p>	<p>Tarion's understanding of fair process and fair decision making has improved since this recommendation. However, delays in issuing Warranty Assessment Reports remained an issue and homeowners were not being consulted when conciliations were made non-chargeable due to refused access. Tarion has now put in place new timelines for issuing Warranty Assessment Reports and homeowners are now being consulted when conciliations are made non-chargeable due to refused access. This recommendation has been implemented.</p>	Complete	June 15, 2020
AR 2018 Builder Directory Information 2	<p>That the current wording on the Builder Directory about the information contained within it be revised to more accurately reflect the claims that appear there.</p>	<p>This recommendation was initially implemented but in subsequent revisions to the Ontario Builder Directory, wording was changed. It has since been revised and provides an explanation of the phrase "homes with claims". This recommendation has been implemented.</p>	Complete	June 15, 2020
AR 2009 - Fair Settlement Offers	<p>That the claims process operate in a manner that is consistent with the expectations outlined in the scope of work training module, which indicates that Tarion should provide the rationale for all settlement offers and share the scope of work so that a homeowner can make accurate comparisons between Tarion and third party contractors That the rationale and breakdown of components in a settlement offer be provided to homeowners in all cases where Tarion is making a cash settlement - not only when the homeowners request it That the scope of work training module is updated to include an enhanced focus on the relationship between Tarion and the homeowner, to ensure fairness and transparency in negotiating settlement of warranty claims That training conducted by the Claims Department should continue to include how to make an accurate settlement offer and should incorporate how to demonstrate that the quote is fair.</p>	<p>This recommendation was initially implemented but in subsequent revisions to the written procedures clarity around the information that should be provided to the homeowner was lost. The procedures have since been revised and clarity restored. This recommendation has been implemented.</p>	Complete	June 15, 2020

AR 2011- Requirement to Provide HIP	That Tarion develop a more effective mechanism to ensure that builders comply with the requirement to provide the Homeowner Information Package and a mechanism to better protect consumers who fall victim to builders who fail to provide them with this required information.	Tarion has developed a new process for informing homeowners about the warranties outlined in the <i>Ontario New Home Warranties Plan Act</i> that addresses the concerns of the Ombuds. This process involves not only builder provision of information earlier in the process, but also Tarion providing information directly to homeowners. This recommendation has been implemented.	Complete	Nov. 30, 2020
AR 2013 - Case Documentation and Handover	That Tarion establish and monitor documentation standards for its CRM system and develop a clear process for case handovers	Tarion has developed a new process for case handover that addresses the concerns of the Ombuds. In addition, Tarion has instituted an audit process to ensure that documentation protocols are being followed. This recommendation has been implemented.	Complete	Nov. 30, 2020
AR 2013 Best Practices for Eligibility of a Home.	That Tarion revise the process to determine if a home is eligible for warranty	Tarion has made improvements to the process for determining whether a home is eligible for warranty coverage which address the Ombuds concern regarding delay. This recommendation has been implemented.	Complete	Nov. 30, 2020
AR 2015 Policy and Process Development	That Tarion review its policy development and implementation process and implement changes to make it more effective.	Tarion has designed and applied a process for developing, auditing and reviewing policies. This process addresses the concerns of the Ombuds. This recommendation has been implemented.	Complete	Nov. 30, 2020
AR 2012 - Builder Honesty and Integrity.	Tarion revisit the current approach used to evaluate and monitor builder honesty and integrity and its connection to builder registration. Tarion enhance the capacity of the existing builder honesty and integrity complaint process by: <ul style="list-style-type: none"> - Reviewing it such that it meets the standards for a credible complaints process - Allowing consumers to submit complaints about builder honest and integrity directly to Tarion. - Develop consistent internal record keeping so that appropriate staff are aware if a builder's conduct raised a concern. - Conducting ongoing training so that appropriate staff are aware if a builder's conduct raises a concern. - Developing communications to stakeholders about how the honesty and integrity complaint process functions. 	Changes were made to Tarion's Honesty and Integrity policy following this recommendation and many of the points were addressed. However, consistent internal record keeping was still lacking. The process for receiving, reviewing and tracking builder conduct complaints was further revised to include consistent internal tracking. This recommendation was implemented. <i>NOTE:</i> Effective February 2021, the Home Construction Regulatory Authority assumed responsibility for builder conduct complaints.	Complete	Nov. 30, 2020

AR 2012 - Enhancing complaint process	<p>To enhance existing complaint and appeal mechanisms to ensure the processes meet the credibility criteria by:</p> <ul style="list-style-type: none"> - Articulating an accessible, consistent process for handling requests for review of warranty decisions for builders and homeowners. - Articulating a consistent process for handling complaints regarding Tarion service or policies. - Developing capacity to handle complaints and requests for reviews of warranty decisions including training and support for management so reviews are credible. 	<p>Following this recommendation, a general complaints process was developed, however the process for making a complaint about a Warranty Assessment Report was not clearly outlined and the process was not made public. Information on this process is now provided proactively to homeowners. This recommendation has been implemented.</p>	Complete	Nov. 30, 2020
AR 2015 Delayed Closing, Financial Loss, Deposit Claims	<p>That Tarion review and revise its procedures for Delayed Closing, Financial Loss and Deposit Claims to ensure that they meet the requirements of fair process.</p>	<p>Following this recommendation, clear processes were developed for Delayed Closing, Financial Loss and Deposit claims. However, there was still an issue of delay which affects fair process. Tarion has since made changes to the Delayed Closing, Financial Loss and Deposit claims process and now informs claimants pro-actively about the timeframe for processing these claims. The timeline for administering these claims is lengthy, but as long as there are no undue delays and Tarion is clear about the timelines, fair process has been met. This recommendation has been implemented.</p>	Complete	October 25, 2021