

NEW HOME OMBUDS



2021 Annual Report

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Message from the New Home Ombuds

2021 was a difficult year for new homeowners, as COVID continued to wreak havoc with new home builds. For those who pre-purchased freehold and condominium homes, supply chain disruption meant delays in construction and a steep increase in construction costs. For those who took possession of their new homes, a third wave and the resulting lockdown meant that builders were unable to access homes to complete repairs and homeowners were forced to live with defects in their new home for far longer than they normally would have.

The impact of this situation has been significant. Over the year we heard complaints from people whose builders had cancelled their purchase agreements because a rise in construction costs meant the builders could no longer obtain adequate financing. We were also contacted by new homeowners who had to cope with a lack of appliances for months due to supply chain disruptions and those who had multiple builder repair period extensions because of new provincial emergency orders. The resulting stress and frustration have taken a toll on health and happiness.

Although we cannot change a purchase agreement that allows a builder to cancel and we can't reverse the emergency orders that led to extended builder repair periods, there are ways we can help.

We can assist homeowners to sort out the next steps in resolving their warranty issues. We can monitor Tarion's efforts to mitigate delays caused by the pandemic. And we can hold Tarion accountable when we find preventable errors that result in unfairness for homeowners.

And of course, we can always act as a sounding board for homeowners who are upset with their situation and simply don't know where to turn. I encourage any homeowner who believes they have been treated unfairly by Tarion, or who needs help in figuring out next steps in the warranty process, to contact us. We can listen to your concerns, review your circumstances and look for ways to help you move forward towards the resolution of your issues.

A handwritten signature in blue ink, appearing to read 'Jill Moriarty'.

Jill Moriarty,
New Home Ombuds

Our Mandate

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 fairness issues and make recommendations for improvements to Tarion.

Our office works to ensure that Tarion treats homeowners fairly. We do this by both promoting and protecting fairness.

Promoting Fairness

Promoting fairness is future focused. We work in a model of ombuds practice which values cooperative influence above assigning blame. We believe it is more effective to prevent fairness concerns than to find them after they have already occurred. To this end, we provide the following proactive services to Tarion:

- Review of draft policies and procedures: When Tarion is developing a new policy or procedure they will often request that we review it in draft form to flag potential fairness issues. In this way, we help ensure that homeowners are not subject to unfair practices.
- Fairness consultation: We are available to Tarion staff for consultation on fairness issues. If a staff member is unsure of the fair way to proceed on a file, they can contact the office to discuss the situation in confidence and we can help them ensure that fairness issues are taken into account when moving forward.

Protecting Fairness

Protecting fairness is about looking at what has happened. Our office protects fairness by reviewing Tarion's past actions, determining whether they were fair and recommending remedy for any issues we find. We do this by:

- Reviewing complaints from homeowners: We receive complaints from homeowners about their treatment by Tarion and, if we find fairness issues, we recommend remedy for the individual case. For information on this process, please see page 6 "The Complaints Process"
- Reviewing systemic issues that we discover in the course of our work: When we become aware of a potential systemic fairness issue, we will explore it through an Own Motion inquiry to determine whether Tarion's processes need to change. If we find that there are fairness issues, we will recommend remedies that will address the systemic issue and result in a fair process for homeowners.

What is Fairness?

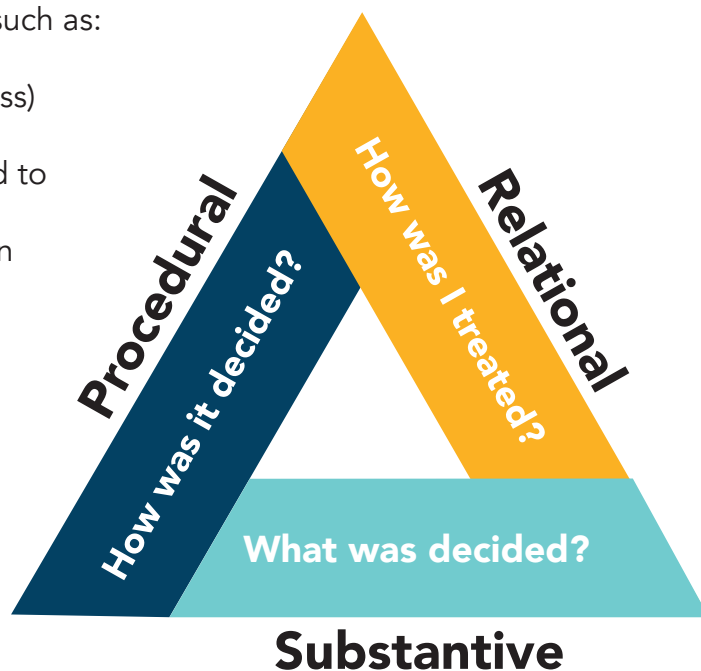
Many people believe fairness requires that all people are treated the same. However, this idea doesn't take into account that people have unique abilities and different resources available to them so that, even if they are treated equally, one person may still be disadvantaged over another due to level of education, social status or economic resources. These differences make equality a very poor indicator of fairness.

Instead of equality, our office advocates for equity. The concept of equity acknowledges that one person may require more, or different, assistance than another. A person with a cognitive disability, for instance, may find completing a warranty form difficult and may need accommodation not provided to other homeowners. This is not being unfair, it is simply providing that person with an equitable opportunity.

In order to determine fairness, our office views Tarion's actions through the lens of equity and Procedural, Relational and Substantive Fairness, as illustrated below.

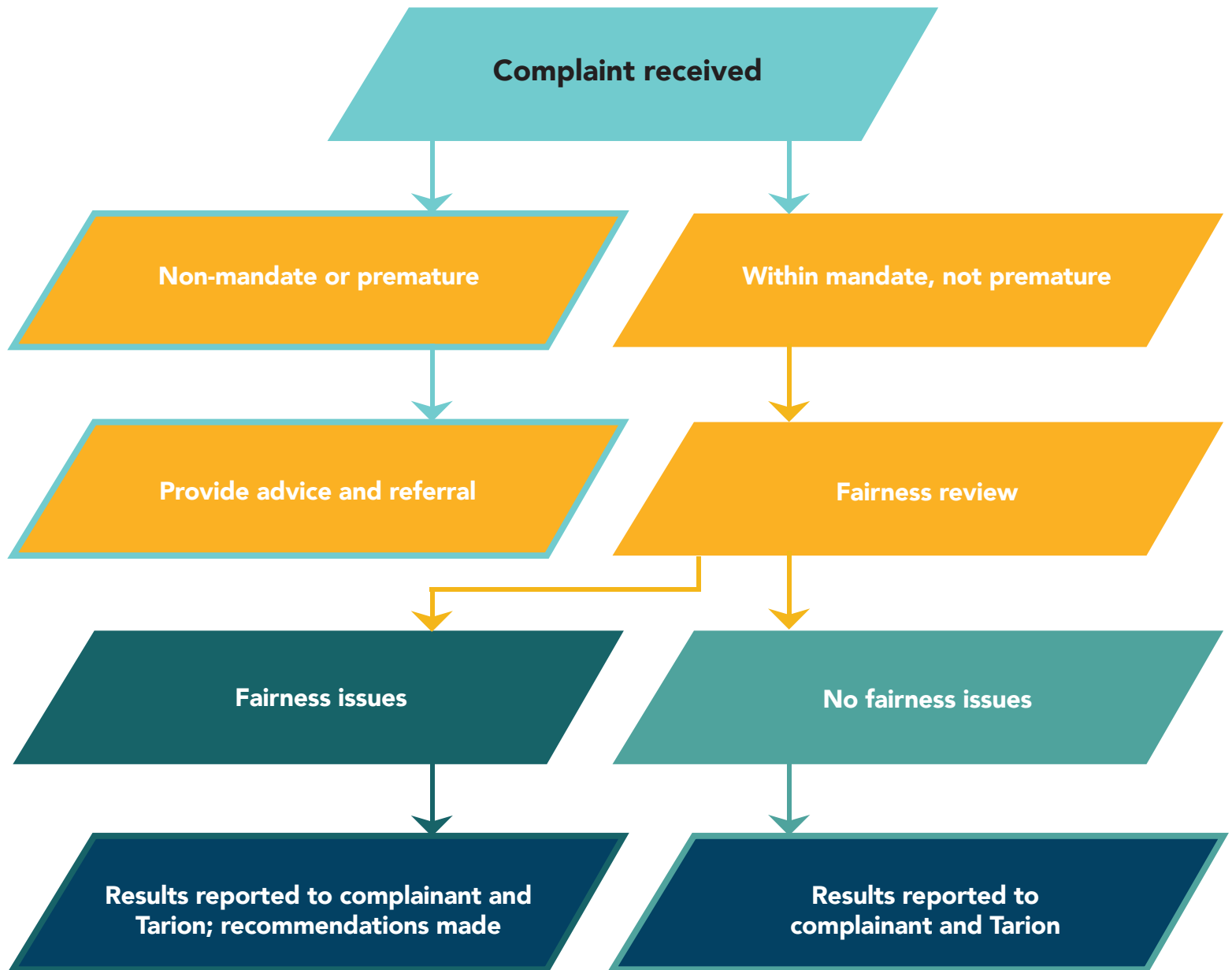
When reviewing Tarion's actions, we ask questions such as:

1. How was the matter decided? (**Procedural** fairness)
 - 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. How was the owner treated? (**Relational** fairness)
 - 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. What was decided? (**Substantive** fairness)
 - 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?



If Tarion has missed even one of these three aspects, the homeowner has not been treated fairly and remedy is needed.

What Happens to Your Complaint?





Financials: The New Home Ombuds office budget was \$468,178 for the fiscal year ending December 31, 2021.

Four Years in Review

Year	2021	2020	2019	2018
Total Contacts	341	518	483	471

As this chart illustrates, 2021 saw a reduction in the number of contacts recorded by the office.

It's impossible to know for certain the reason for this reduction, but it can likely be attributed to two influences:

1. The ongoing pandemic. The majority of our complaints relate to Tarion's handling of warranty claim resolution. The extended lockdowns in 2020 and 2021 meant that there were periods where Tarion conducted fewer inspections and resolved fewer files. It is predictable that a corresponding reduction in complaints would begin to show up in 2021.
2. The designation of the Home Construction Regulatory Authority (HCRA) as the regulator of builders in Ontario. Previously, our office would receive complaints from homeowners about how Tarion was dealing with their complaints about builder conduct, honesty and integrity and illegal building. Since HCRA took over builder regulation effective February 1, 2021, these complaints no longer come to us

Complaint Issue

	2021	2020	2019	2018
Builder Issue	40	182	212	218
Tarion Process	235	262	225	213
Tarion Policy	7	12	15	25
Non-Mandate	58	56	31	15
Ombuds issue	1	3	0	0
Other/Unknown	0	3	0	0

Independence Update

In 2019 the New Home Ombuds office began to explore ways in which we could both increase and demonstrate our independence from Tarion. We instituted a series of measures to accomplish this and have reported on them each year in the Annual Reports. As of 2021, all measures introduced as part of this project have been completed. We are happy to provide our final report on this initiative.

External Validation: The external Compliance Review and Evaluation of the New Home Ombuds office, began in late 2020 and was completed in 2021. Dr. Nora Farrell, who conducted the evaluation, rated the office highly in the areas of structural independence and confidentiality. In addition, she made eleven recommendations to improve the service provided by the office. Of the eleven, eight have been implemented and three are in progress.

Dr. Farrell's report and the office's response to it can be found on our website.

Legislation: As reported in the 2020 Annual Report, changes to the *Ontario New Home Warranties Plan Act* enshrined the office in legislation. In 2021, the Ministry of Government and Consumer Services consulted with us on the Regulations being developed to accompany the Act. The resulting Regulation 627/20, which came into effect this year, provides details regarding the role and duties of the Ombuds office, offering additional assurances of independence for the office.

In addition to the legislation and regulations, the Ministry signed a new Administrative Agreement with Tarion in 2021. This Agreement strengthens the independence of the office in several ways, including by protecting the Ombuds from termination as reprisal for criticizing Tarion.

The new Administrative Agreement also prohibits the Corporation from accessing Ombuds records. The Ombuds has never shared its records with Tarion, but this new Agreement provides a formal measure of security to the confidentiality of our documents.

“You were very helpful and put my mind at ease.”

“I greatly appreciated the Ombuds staff’s kindness and willingness to help me find the proper channels of communication and contact for issues that were not within her purview. For those issues that were under her authority, she provided very clear reasons and explanations for the determinations given. Overall, she brought a level of humanity to a very distressing circumstance.”

Real people, real concerns

case stories

The Impact of Our Office

Much of the work our office does is unseen. By working cooperatively with Tarion we are able to prevent fairness issues from occurring. The Ombuds meets regularly with Tarion's Warranty Services management team to discuss emerging issues and trends and we provide proactive fairness advice on new and revised policies and processes.

But we also enable positive change by reviewing complaints and holding Tarion accountable for errors that have affected individual homeowners. Here are some of these homeowners' stories.

Delayed Response

Ms. M called the New Home Ombuds office in the first week of January with a complaint that Tarion was not returning her calls. Ms. M's builder had not responded to a request for documents, and she wanted Tarion's assistance in obtaining them. She had left voice messages with both her Tarion Warranty Services Coordinator and the Manager and had not heard back from either. She asked for our help in reaching Tarion. She requested that both Tarion and our office use only phone or regular mail to contact her, as her email was not working.

When our office reviewed Ms. M's file, we discovered that Tarion had not yet responded to her because she had contacted them during the winter holiday closure, which had just ended. Although Tarion staff had holiday messages on their voice mail, Ms. M had been too upset to hear them. Our office explained to Ms. M that



her calls had not been returned because the Tarion office had been closed until the day she reached out to the Ombuds.

In our review of the file, we learned that the Warranty Services Coordinator had attempted to contact the homeowner but had been unable to get through. Our office contacted the Coordinator and asked that they contact Ms. M again, as she was now available.

We followed up with Ms. M by regular mail to let her know that the Coordinator would be contacting her, and at her request, provided her with written verification that we had contacted the Coordinator. We also followed up with the Coordinator to make sure that she had reached Ms. M and addressed her concerns.

The impact: Often delays that seem to indicate a lack of care to a complainant can be attributed to circumstances rather than Tarion error. In such cases, our office can assist by helping all parties to understand the situation. This helps to repair relationships and avoid unnecessary escalation.

"You were kind thoughtful and provided me with hope for the system. At my age I don't find many people who understand what it's like not being computer smart. Thank you!"

Multiple Cases, Multiple Staff

Like many homeowners, Mr. P's warranty claims were affected by the pandemic. Because of the provincial emergency orders and the subsequent need to extend builder repair periods, Mr. P had several claim forms active at the same time, each with different Tarion staff members assigned. Mr. P was having trouble tracking the claim items for the various forms and he was confused about who to speak with regarding specific claim items. Worried that some claim items might get lost in the confusion, Mr. P came to our office seeking assistance.

We reviewed the file and observed that Mr. P's description was accurate. He had five claim forms active, and several different Tarion staff members assigned to his various cases. Given the situation, his confusion was understandable.

Tarion was actively addressing Mr. P's warranty issues, so there was no need for our office to intervene in that regard. Instead, we made a procedural recommendation to help remedy Mr. P's confusing situation.

We recommended that Tarion assign one Warranty Services Coordinator to Mr. P. This Coordinator would be the sole point of contact to manage the ongoing claims, answer Mr. P's questions and to assist him in getting help from Tarion. We also recommended that Tarion complete an inventory of all the outstanding items from the five warranty forms and send Mr. P a written summary of them so that he could have clarity on the status of each item.

The impact: There are times when, even though Tarion is following correct procedures, the unique circumstances of the case lead to a situation where it is difficult for the homeowner to understand and follow the warranty process. When this happens, our office can provide a fresh perspective and offer new ideas to address the problems.

Cash Settlement Concerns

Mr. R disagreed with a Tarion decision. Although his sink issue had been warranted, he was extremely frustrated about the cash settlement amount that Tarion had offered. He had an expert report to say that the entire sink needed to be replaced and Tarion had offered the cash value for repair only. He decided to appeal Tarion's decision to the License Appeal Tribunal and requested a Decision Letter so he could do so. He contacted our office because he had received no response to this request from Tarion.



When we reviewed Mr. R's file, we discovered that not only had there been no response to his request for a Decision Letter, but that also, according to new policies Tarion had recently put in place, he should have been offered an opportunity to enter into mediation with Tarion to resolve the issue.

When we asked Tarion why Mr. R had not been provided the opportunity for mediation, they explained that the mediation option was so new, they were still in the process of instructing the warranty staff to redirect disputes to mediation as an option before appealing to the tribunal.

Mr. R was interested in taking part in a mediation. We confirmed with Tarion that his sink dispute was eligible for mediation and referred him to the department that could provide more information and arrange for the mediation.

The impact: There are always kinks in any new process. Our office can discover these twists and help to straighten them out.



Missing Item

Tarion had determined that several items in Ms. B's home were warranted under the first-year coverage. The builder did not address them during the post-conciliation builder repair period and therefore Tarion provided her with a cash settlement offer, based on quotes from several contractors.

Ms. B did not believe that the compensation offer Tarion sent to her was sufficient to cover the actual repairs and she came to the Ombuds office for assistance. We explained to Ms. B that our office does not have either the expertise or the authority to determine whether settlement amounts are correct, but that we could complete a fairness review to determine whether Tarion had followed the correct procedure to calculate the cash settlement offer.

In our review, we found that Tarion had made an error. They had used 4 separate quotes to arrive at their compensation offer, however, 3 of the quotes were missing one of the warranted items. This was a fairness issue that affected the amount of compensation Ms. B was offered. As remedy, we recommended that Tarion obtain new quotes that included all of the warranted items, and issue a revised compensation offer.

The impact: Mistakes can happen, and when Tarion makes a mistake that impacts a homeowner, our office can find it and help get things back on track.

Delayed Closing Dispute

Our office regularly receives complaints about Tarion's warranty decisions. While we do not assess warranty issues or make warranty decisions, our office can review concerns about whether Tarion's assessment process was fair to a homeowner. The key question we examine in our fairness reviews is whether the Tarion processes and policies were fair and applied

equitably, and whether the communication and reporting a homeowner received from Tarion was clear and timely.

Mr. S contacted our office because he disagreed with Tarion's decision regarding his Delayed Closing claim. He felt that Tarion had not assessed his claim fairly and complained that they had not responded to an email he had sent about inaccuracies he noticed in the Warranty Assessment Report.

The Ombuds office informed Mr. S that while we doesn't have the authority to overturn a warranty decision, we could review his file to ensure that fair process had been followed in his assessment and to look into his concern about Tarion's non-response to his email.

Our office reviewed Mr. S's file and found that, while Tarion had followed appropriate process in assessing his Delayed Closing claim, and although they had read and considered the points he raised in his email, they had not responded to provide Mr. S with an explanation of why his arguments did not change their warranty decision.

Our office was able to assist Mr. S by recommending that Tarion offer a written apology and an explanation of why the information he provided did not change their assessment of his Delayed Closing claim.

The impact: While we cannot change Tarion's warranty decisions, we can ensure that Tarion understands the importance of clear and timely communication with homeowners. This is even more important when the homeowner receives a negative outcome.

Late Form Submission

Tarion had determined that Ms. K's builder was unwilling and unable to fulfil his warranty obligations, so when she discovered water coming through the basement ceiling, she contacted Tarion rather than her builder. Unfortunately, Ms. K was five days beyond her Second-Year warranty date, so coverage for plumbing issues had expired. She spoke with several Tarion staff members, who told her that the issue would not be covered, as her remaining coverage was for major structural defects only.

Ms. K felt that Tarion should take care of the issue because, although she did not see the effects of the water leak until after the Second-Year coverage expired, the issue had been present for several months prior, when coverage was available.

Ms. K tried escalating to a manager and finally to a director, but Tarion's response remained the same: the issue simply couldn't be covered under the warranty.

Ms. K called our office to see if we could assist her. When we reviewed Ms. K's concerns we determined that hers might be a good case for Tarion's new mediation program, as mediation provides an avenue for resolution when

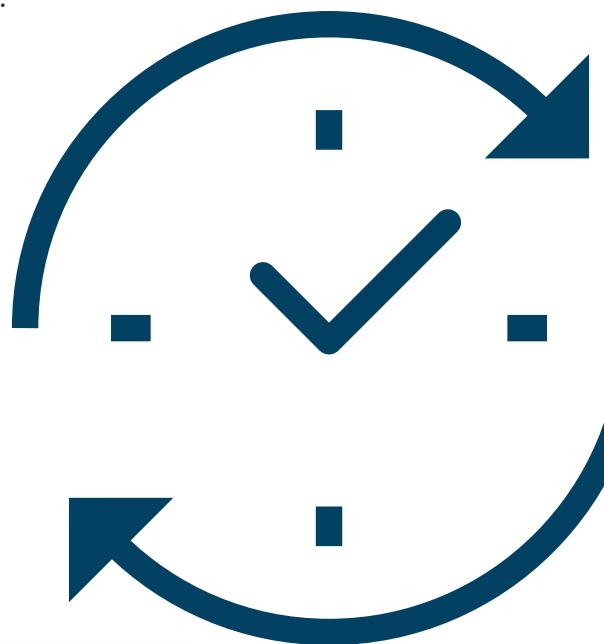
standard means aren't successful. We spoke to the manager of this program and she agreed that mediation might be a good alternative. We provided Ms. K with information about mediation and referred her to the appropriate department.

"Staff was amazing! Positive experience."

"Thank you once again for taking the time to address my concerns and offering some information regarding the proper channels to pursue further action. You have really helped us to better understand the processes of Tarion and reasons for determinations to date."

Ms. K participated in a mediation and was able to successfully resolve her concerns.

The impact: Sometimes, when an issue is long standing, those involved can become entrenched in their positions. A fresh pair of eyes can bring in a new perspective and find different ways to approach a problem. Our office can serve that function.



"Thank you, this information was very helpful."

Water Penetration Issue

Mr. G called the New Home Ombuds office to say that he had substantial and ongoing water penetration in his home. He had listed the water penetration on multiple warranty forms over the years and his builder had made efforts to remedy the issue, but no fix seemed to work. Water would enter Mr. G's basement every winter after the snow melt or in spring following heavy rain. After submitting a Major Structural Defect form, the water penetration was found to be warranted and Mr. G entered into a Major Structural Defect Resolution Agreement with his builder. The Agreement stipulated that his builder would repair the issue by a specified date or Tarion would step in and resolve the issue. The date specified in the agreement passed and Mr. G heard nothing from either his builder or Tarion. He contacted Tarion but did not receive an adequate response. Feeling frustrated, he contacted the New Home Ombuds office.

When the Ombuds office reviewed the matter, we discovered fairness concerns with the file. We learned that, although Tarion had warranted the water penetration as a builder defect and the Major Structural Defect Resolution Agreement had been signed, Tarion was not certain that the water penetration was, in fact, caused by a builder defect. Tarion later conducted two further re-assessment inspections and determined that the item should not have been warranted. However, they did not issue a Warranty Assessment Report for the final inspection, which changed the assessment status to "not warranted", until two months past the date that Tarion was to have resolved the issue.



Our inquiry revealed that although Mr. G was aware that a re-assessment had occurred, he was not adequately informed that the re-assessment had resulted in a change of warranty status and that, contrary to the Major Structural Defect Resolution Agreement, Tarion would not be resolving the issue. This was a fairness issue. As a remedy for this fairness issue, our office recommended that Tarion offer an apology for the inadequate communication and offer Mr. G the opportunity to participate in mediation to resolve the water penetration issues.

As a result of our intervention, Tarion elected to offer Mr. G a cash settlement sufficient to completely address the water penetration issue.

The impact: When communication with homeowners is not clear, they have limited ability to ensure fair treatment. Our office, with full access to Tarion's records, can determine when processes have been applied fairly.

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

"The staff was very understanding of my situation and was clear on what was required to move forward. I appreciated the fact that I wasn't transferred or directed to call elsewhere. Ombuds staff took control of the reason for my calling and gave me some clarification on process."

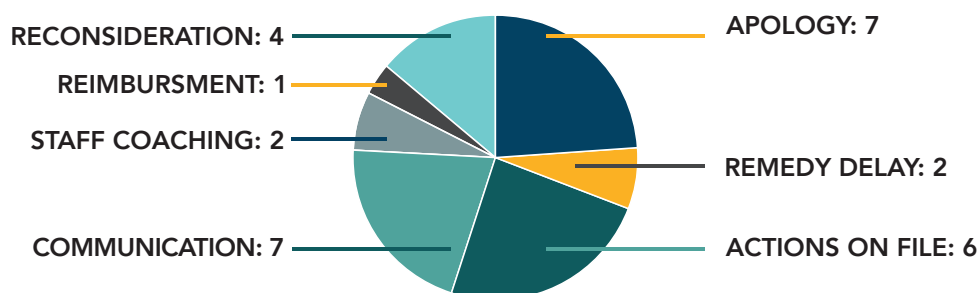
Recommendations

One of the important functions of an Ombuds office is to uncover and alert the organization to both individual instances of unfairness and to larger, systemic fairness issues, and to make recommendations for remedy.

Throughout the year, our office makes recommendation for redress of fairness issues and, although Tarion has no legal obligation to follow the New Home Ombuds recommendations, all recommendations made in 2021 were accepted.

2021 Case Specific Recommendations

When the New Home Ombuds office reviews an individual 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 a simple acknowledgment of error and an apology. In 2021, the office made case specific recommendations in 9 individual cases, with some cases having multiple recommendations.



All recommendation but two, which are ongoing, have been implemented.

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 2021, the office made one systemic recommendation that came out of an individual complaint review. You can read about it in the in the section on Systemic Recommendations, below.

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 2021, we initiated three Own Motion inquiries as a result of individual complaints. Two led to facilitated solutions and one resulted in a systemic recommendation. You can read about them below.

Systemic Issues - Facilitated Solutions

Sometimes, although systemic issues affect many homeowners, there can be a simple fix available. In these cases, all that is needed is for our office to alert Tarion to our concerns about the systemic issue and then work with them to find a facilitated solution. This was the case in two instances of website issues this past year.

Outdated Webpage

Mr. D was unhappy with a determination regarding the eligibility of his home, so the Tarion investigator that handled his file provided him with information on appealing the decision. Unfortunately, the information contained a link to a webpage that incorrectly connected the New Home Ombuds office to Tarion's process for disputing a warranty decision. It also did not make a clear distinction between disputing a warranty decision internally and appealing externally to the License Appeal Tribunal.

We brought these issues to Tarion's attention, and their Strategic Communications department was able to track down and remove the outdated webpage. This systemic issue was resolved without need for a recommendation.

Information Accessibility

While in discussion with a homeowner, Tarion's Access to Information and Privacy Code came up. The homeowner informed us that she had been unable to find this document using the search function on Tarion's website. We tested it, found this was the case and opened an Own Motion inquiry to investigate further.

Through our inquiry, we learned that the Access to Information and Privacy Code is available in the footer of all pages of the Tarion website and that this is standard placement for privacy policies on organizational websites.

However, not all users of the website may know to scroll to the bottom of the page for this information, therefore we alerted Tarion that this document was not coming up through the search function. We suggested that they make the changes necessary to ensure a search for the key word "privacy" would pull up the document.

Tarion reviewed the issue and learned that the Access to Information and Privacy Code was on the website as a specific content type that is not indexed by Google, therefore it was not appearing when searched. Tarion has since changed the content type and the Access to Information and Privacy Code now comes up when the key word "privacy" is typed into the search function on Tarion's website. This systemic issue was addressed without need for a recommendation.

Systemic Issues – Recommendations

With some systemic issues that may be more complex or involve several departments, more time is needed for Tarion to determine the best way to address the issue. In these cases, we make recommendations. If Tarion accepts the recommendations, they provide us with an implementation plan and we monitor the plan's progress to ensure that the recommendations are implemented and the issues resolved.

Follow up on Previous Systemic Recommendations

In 2020, the New Home Ombuds made systemic recommendations in two areas: Documentation and Photo Availability.

Documentation: We found instances in which interactions with homeowners were not properly documented on the file. This made it difficult to properly review complaints, and we recommended additional training for Warranty Services staff. Although the 2020 recommendations were fully implemented at the time, documentation continued to be an issue. In November 2021, Tarion made changes to their data storage system that we are told will make entering interactions quicker and more efficient. We will continue to monitor this issue over the next year to determine whether documentation by Tarion staff improves.

Photo Availability: We found that, while builders were able to access photos taken by Tarion staff at inspections, this same access was not available to homeowners. We recommended that Tarion develop processes to ensure that homeowners had access to these photos.

As a result of this recommendation, Tarion immediately began to pro-actively inform homeowners that these photos were available to them and to send them to any homeowner who requested it.

Tarion has since made further changes that will assist homeowners in accessing photos. A new data storage system, implemented by Tarion in November 2021, allows photos to be included in

Conciliation Assessment Reports, removing the need for homeowners to request them.

The final phase in implementing this recommendation will take place in 2022, when the MyHome portal will be updated to include the ability to store inspection photos, which will be able to be viewed by homeowners.

The New Home Ombuds office is satisfied with the progress of this recommendation's implementation.

New Systemic Recommendations

In 2021, we made two systemic recommendations.

Communication

This recommendation came out of an issue identified when reviewing an individual case. The homeowner involved had dealt with several Tarion staff over the course of dealing with warranty issues and was unsure who to contact, when. This resulted in the homeowner sending emails that were addressed to numerous Tarion staff. In many instances, the staff addressed assumed that another addressed staff person would respond, with the result that no one did so.

We recommended training for Tarion staff on best practices to deal with email communication from a homeowner that is sent to multiple staff members.

This recommendation was accepted and is in the process of being implemented.

Major Structural Defect Resolution Agreement Acknowledgement Letter

The complaint outlined in the case story “Water Penetration Issue” alerted our office to a systemic fairness issue regarding a discrepancy in the information provided to homeowners who sign a Major Structural Defect Resolution Agreement. We initiated an Own Motion inquiry to investigate further.

When a Major Structural Defect reported by a homeowner is determined to be warranted at a conciliation inspection, Tarion encourages the builder to enter into an agreement for resolution with the owner. This is done using a standard written form, provided by Tarion: the Major Structural Defect Resolution Agreement.

Tarion’s agreement form requires that the builder give a date for completion of the repairs and states that if the defects are not resolved by this date, Tarion will resolve them directly with the owner. This allows for the flexibility in timelines often needed when addressing major structural defects yet ensures that the owner is protected from unreasonable delay in resolution of the items.

In these instances, it is the responsibility of the builder to work out the dates with the owner and to provide Tarion with a copy of the Major Structural Defect Resolution Agreement, signed by both the builder and owner. Tarion, upon receiving the form, sends an Acknowledgement Letter to the owner confirming receipt of the Agreement and outlining next steps should resolution of the defect not take place by the agreed upon date.

The case in question brought the Major Structural Defect Resolution Agreement form and Acknowledgement Letter to the attention of the New Home Ombuds office. In reviewing the Agreement form and Acknowledgement Letter, we found discrepancies in the information provided in these two documents.

The Major Structural Defect Resolution Agreement form very clearly states that, should the builder not resolve the defects by the agreed upon date, Tarion will resolve them directly with

the owner. However, the Acknowledgement Letter states that if the builder does not resolve the warranted items by the resolution date, the homeowner “can contact Tarion to request that we assess the situation”.

There are two issues with the wording of the Acknowledgement Letter.

1. The letter places the responsibility for follow up on the homeowner.

During the 1st and 2nd year warranty process, when an item is warranted, the builder is given a standard 30-day post-conciliation repair period to resolve the items and it is the responsibility of Tarion to contact the owner at the end of this 30-day period to determine whether resolution has occurred. If not, Tarion schedules a claim inspection and settles unresolved items directly with the owner.

Major Structural Defects can be complex and require a lengthy repair period. In this instance, it is even more important that Tarion follow up to ensure that the resolution process proceeds smoothly. Placing the onus for follow up on the owner in these cases is unfair.

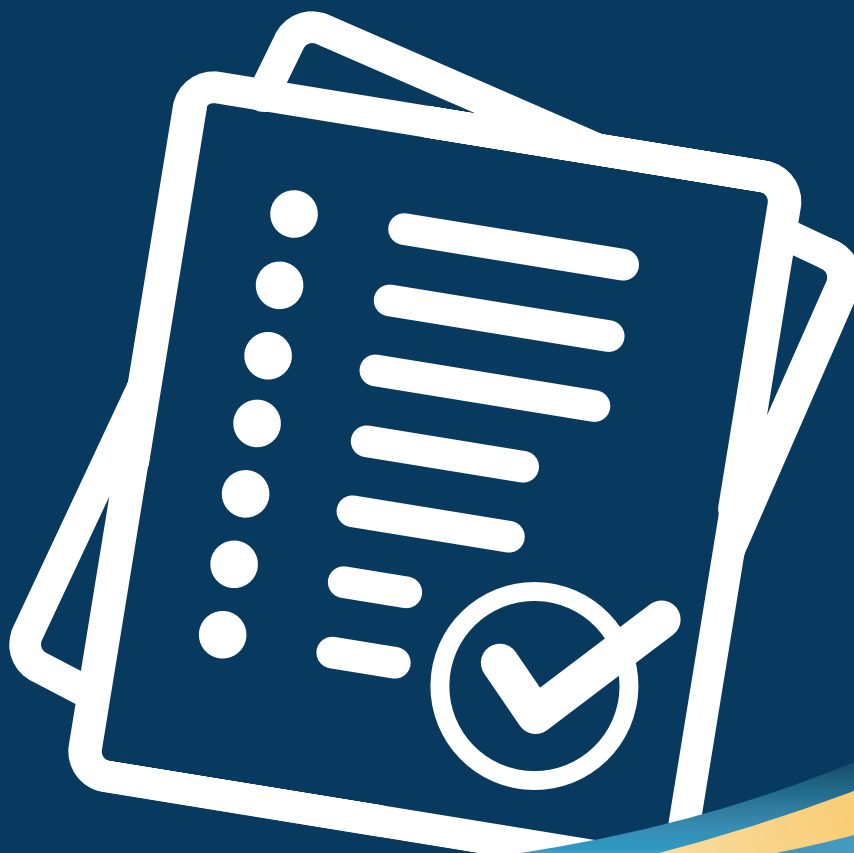
2. The letter implies that Tarion may not, after all, resolve the issues at the expiration of the Agreement deadline.

The requirement for the owner to request a “re-assessment” implies that Tarion may determine that the defect is, after all, not warranted. Although this is not Tarion’s intent, this wording is confusing and could create additional stress for a homeowner who is already dealing with an unresolved major structural defect. It also contradicts the wording on the signed Major Structural Defect Resolution Agreement.

Recommendations

In order to address these fairness concerns I recommend that Tarion:

1. Revise the Acknowledgement Letter sent to homeowners after Tarion receives a copy of the signed Major Structural Defect Resolution Agreement. The revisions should make it clear that:
 - a. it is Tarion's responsibility to follow up with the homeowner at the expiration of the Agreement deadline; and
 - b. the only inspection that will be required at the expiration of the Agreement will be a standard claim inspection to confirm that the warranted items have not been resolved.
2. Ensure that all Warranty Services staff understand that:
 - a. Tarion is responsible to follow up with the homeowner at the expiration of the Major Structural Defect Resolution Agreement to determine if the warranted items have been resolved; and
 - b. the only assessment required if the warranted items have not been resolved will be a standard claim inspection to confirm that the items have not been addressed.



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 2021 New Home Ombuds Annual Report.

Tarion accepts the New Home Ombuds recommendations.

Implementation Plan:

Warranty Services will complete a review of both the Acknowledgement Letter and MSD Resolution Agreement (MSDRA), with specific focus on the recommendations of the Ombuds and with an eye to any other possible improvements or opportunities for further clarity.

Timing for the completion of the review: End of Q1 2022

In the interim to the implementation of the new documents, Warranty Services will issue a communication to staff to follow up on MSD Resolution Agreements.

Timing for the communication: End of February 2022

Upon completion of the review, Warranty Services will meet with the Ombuds to go over suggested improvements and changes to the documents.

Timing for the meeting with the Ombuds: end of April 2022

The suggested changes, following discussion with the Ombuds, will be incorporated into both documents.

Timing for the changes to the documents (subject to any system limitations): End of Q2 2022

Following the implementation of the changes, Warranty Services will hold training sessions with all staff to ensure all staff are aware of the changes and their responsibilities.

Timing for the completion of the training for WS staff: End of July 2022



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.

You can call, mail or email us to discuss your concern. If you'd like to meet in person, we can arrange a time to do so. Our office is open from 8:30 am to 5:00 pm, Monday to Friday.



**Top left: Jill Moriarty, Top right: Fatima Ainanshe
Bottom left: Noah Waksman, Bottom right: Rachel Schmidt**

CONTACT US:

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IN PERSON: Please call us to make an appointment.