

# 2022 Annual Report

NEW HOME OMBUDS





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# Message from the New Home Ombuds



2022 was another challenging year for Ontarians. COVID continued to impact many facets of our lives, not the least that of the building industry and homeowners themselves.

Although the provincial government lifted all pandemic restrictions in March 2022 and COVID numbers decreased throughout the year, the lingering effects of the pandemic continued to affect homeowners. Disruption to the supply chain increased for businesses and the construction industry was not immune. Builders continued to have difficulty sourcing materials and appliances to finish and repair homes.

In addition, labour shortages impacted Ontario builders' capacity. Not only was there an ongoing deficit of workers in the construction sector, but in the spring of 2022, labour disputes took skilled trades out of the workforce for a portion of the construction season. These factors delayed some closings and repairs to new homes.

Delay was consequently a common theme in many of the complaints our office received and often factored into the dissatisfaction homeowners experienced with new builds. Many of the delays were the direct result of the challenges outlined above.

From the Ombuds Office perspective, Tarion, too, experienced challenges in 2022. The lockdowns of 2020 and 2021 had created a backlog of inspection requests and the shortage of skilled trades affected the company's ability to bring in third party experts when required for assessment. While these situations were outside Tarion's control, they left many homeowners waiting too long for the inspections they needed.

Our office has been monitoring this situation throughout the year. I can report that Tarion has been making progress in clearing the backlog and is putting measures in place to ensure that service returns to pre-pandemic levels as soon as possible.

One of the challenges of a year of inspection backlog and high workload for Tarion was in providing clear and consistent communication to homeowners. Several of the complaints we dealt with centred around inadequate communication regarding Tarion processes. One example of this can be found in the case story of a complaint called "Change in Warranty Status" on page 9.

We also saw an increase in complex cases in 2022. These cases involve complaints that can span two or more years, encompass multiple claims forms, and include Tarion staff from several departments and levels of authority. They require particular handling, take longer to complete and often result in recommendations for both individual and systemic remedies. Fueled in part by the lingering effects of the pandemic, the complaints that fit this category nearly doubled.

The New Home Ombuds office is here for homeowners. Our role is to ensure that people have been treated fairly through Tarion's processes, its decision-making and in the respectful treatment of individuals. We welcome your calls!

Jill Moriarty,  
New Home Ombuds

# Our Mandate\*

## The role 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 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 identify 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 unfairness 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 a remedy for the individual case. For information on this process, please see page 6 “What Happens to Your Complaint”.
- 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 outcome for all homeowners.

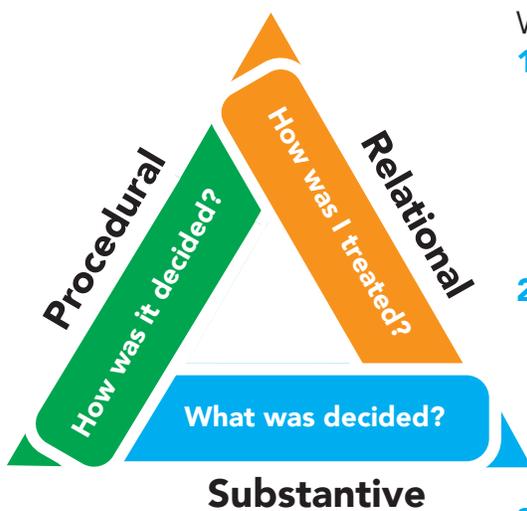
\*For the full New Home Ombuds mandate, please see our Terms of Reference.

# What is Fairness?

Many people believe that fairness requires all people to be 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 be advantaged 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.

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

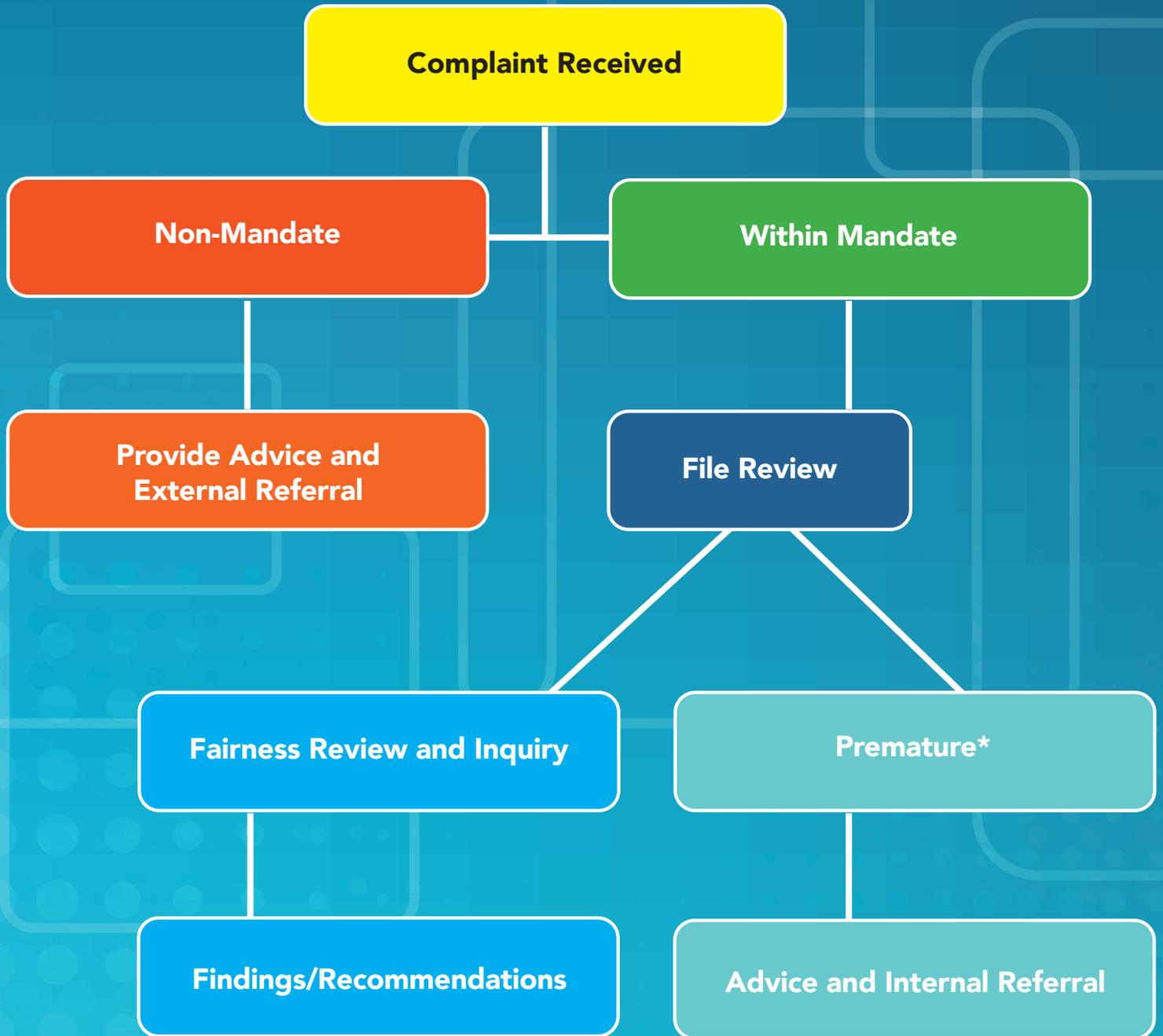


When reviewing Tarion's actions, we ask questions such as:

1. How was the matter decided? (**Procedural** fairness)
  - a. Did the homeowner have enough information to understand the process and to advocate for himself/herself?
  - 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 homeowner 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?

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?



\*Premature complaints are those where Tarion has not been given an opportunity to address the issue.

# 2022 at a glance

**Total Contacts:**  
**346**

**Contact Type:**

<b>Complaint</b>	<b>278</b>
<b>Information Request</b>	<b>68</b>

**Tarion Complaint Issues**

Warranty Assessment	40
Delay	30
Communication	22
Water penetration	21
Specific defect	15
Cash Settlement	14
Non-specific	10
Form Submission	8
Eligibility	7
Scheduling	5
Timelines	5
Inspection	4
Decision Letter	3
Builder access	3
Delayed Closing	2
Accommodation	2
Pre-Delivery Inspection	1
Chargeability	1
Failed Repair	1
Financial Loss	1
Legislation	1

**Non-Mandate Complaint Issues**

Complaint from builder	40
Builder Conduct	15
Contractual	15
Non-Tarion issue	5
Staff Impropriety	1
Case in legal process	1
Legislation	1

In addition to the above, we had four complaints from homeowners who disagreed with the findings made by the Ombuds office in their complaint review.

**Ombuds Complaint Issues**

Dispute of Findings	4
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**Complaint Outcomes**

Complaint premature	104
Referral provided	72
Complaint abandoned	46
No unfairness found	15
Facilitated solution	12
Unfairness found, recommendation made	11
Fairness issues found, already remedied by Tarion	4
Information provided	6
Ombuds declined	3
Complainant Withdrew	3
In progress	2



**Financials:** The New Home Ombuds office budget was \$507,000 for the fiscal year ending December 31, 2022.

# Four Years in Review

Year	2022	2021	2020	2019
Total Contacts	346	338	515	479
Complaints	278	245	383	389
Information Requests	68	93	132	90

As this chart illustrates, the number of complaints this year has increased from 2021 but remains under pre-pandemic levels.

## Complaint Issues

Year	2022	2021	2020	2019
Builder Issue	0	40	182	212
Tarion Process	194	235	262	225
Tarion Policy	1	7	12	15
Non-Mandate	78	58	56	31
Ombuds Issue	4	1	3	0
Other/Unknown	1	0	3	0

In 2022, the Home Construction Regulatory Authority assumed responsibility for complaints about builders. As they no longer fall within Tarion’s authority, our office lists these complaints as Non-Mandate.

# Real People, Real Concerns

## case stories

### The Impact of Our Office

Much of the work our office does is unseen. By working proactively 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.

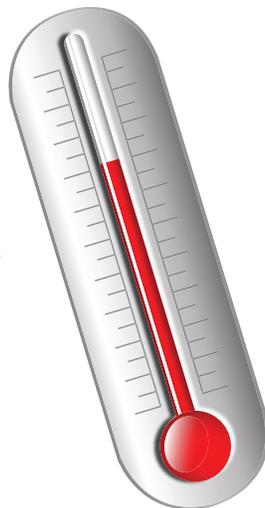
But we also enable positive change by reviewing complaints and holding Tarion accountable for errors that have affected individual homeowners.

Here are some of these homeowners' stories.

### Change in Warranty Status

Like many homeowners, Mr. C switched to working from a home office during the pandemic. When the summer months hit, he became aware that the second floor office of his new home was exceptionally warm. During a heat wave, it was simply too uncomfortable to work in the room. Mr. C believed there was a defect with the HVAC system and included this as an item on his Year End warranty form.

On the day of Tarion's inspection, the outside temperature was low and Tarion could not accurately assess the issue, so they hired an HVAC consultant to conduct an assessment and report back. The contractor concluded that there was a defect with the HVAC system and based on this, Tarion determined that the item was warranted. Mr. C was pleased to know that the builder would be required to address the issue.



*“Staff were amazing and got action on the file so quickly! I really appreciate their work on this file”*

However, after several weeks, Mr. C suddenly received a new Conciliation Assessment Report from Tarion. In the new report, the warranty status of the HVAC issue had been changed from “warranted” to “not assessed and needing further inspection”. Mr. C was very frustrated and believed that the builder had convinced Tarion to change the warranted status. He outlined this concern for the Ombuds office, and we conducted a review to determine whether it was fair that Tarion had changed the warranty status.

It is not uncommon for either homeowners or builders to disagree with Tarion's warranty findings. If a homeowner disagrees, they may contact Tarion to discuss the disagreement and in some cases, based on the points raised by the homeowner, Tarion might reassess an item and change their decision.

Builders have the same option to challenge Tarion’s assessment and this is what happened in Mr. C’s case. The builder had pointed out concerns with the third-party assessment and, after considering the builder’s position, Tarion decided that further investigation of the HVAC was required before a final warranty determination could be made. Our office considers it reasonable that Tarion provides builders and homeowners equal opportunity to question their warranty assessments and because of this, we found that it was fair for Tarion to change the warranty status of Mr. C’s HVAC item.

However, we identified concerns with how Tarion communicated this to Mr. C. We considered it unfair that Tarion did not inform Mr. C about the builder’s challenge to the warranty status or provide him with an opportunity to respond to the new information the builder provided prior to changing the warranty status. We also found that Tarion had not clearly explained to the homeowner what the builder’s objections to the original assessment had been. We recommended that Tarion apologize for the lack of communication and that they send a written summary to describe what the builder considered incorrect in the contractor’s assessment.

***“Thank you for helping me navigate the very complex problems I am having on the new condo purchase.”***

Mr. C’s complaint revealed systemic concerns about how Tarion communicates with homeowners when a builder challenges Tarion’s warranty decision. You can read about the subsequent Own Motion investigation and the resulting systemic recommendations on page 15.

### **The Impact:**

Sometimes, a homeowner’s complaint will draw the Ombuds Office’s attention to a systemic issue that we were previously unaware of. When this happens, it provides an opportunity for us to investigate and potentially improve the process for all homeowners.

## **Unclear Case Closure**

Mr. L submitted a Complaint Form to the Ombuds office, stating that Tarion had closed his Year End case prematurely. He said that Tarion had forgotten to assess water penetration through a window in his condominium, which was one of the items listed on his Year End warranty form.

When the Ombuds office conducted our review, we found that the final assessment for the Year End form stated that the water penetration through the window needed further investigation. However, there was no follow up assessment report to show that the water penetration had been re-assessed. It looked like the item had been forgotten.



When we spoke to Tarion about this concern, we learned that the water penetration through the window had been the subject of a separate Tarion Investigative Inspection under a different part of Mr. L’s file. Tarion brought in an external contractor to assess the issue and, based on their report, had determined that the water penetration was related to a Common Element and would be covered under the Condominium Corporation’s coverage rather than Mr. L’s unit coverage.

While a separate report had been issued to clarify this, Tarion did not clearly communicate to the owner that the Year End case was complete because this item had been addressed through the investigative inspection process. Our office found this lack of clarity to be a fairness issue. We recommended that Tarion apologize and provide a written summary to communicate the warranty status of water penetration and reason for closing the Year End case.

### The impact:

In this case, Tarion had appropriately addressed the water penetration issue, but because they did not communicate clearly, the homeowner was left with questions. Our office was able to determine what had happened and gain clarity for the homeowner.

*“I am grateful for your guidance in solving the problems and will check with the several contacts you suggested in your email.”*

## Lack of Response

Ms. N had recently received a Conciliation Assessment Report from Tarion and disagreed with the warranty decision made on two of the items. She followed the process outlined by Tarion in the letter she received with her report and emailed the Warranty Services Representative regarding the items. When she did not receive a response to her email, she followed the escalation process also outlined in the letter and contacted the Warranty Services Manager. Several weeks went by and she did not receive

a response to either email. Frustrated, Ms. N contacted the New Home Ombuds office for assistance.

Ms. N’s complaint form stated that she was concerned about Tarion’s lack of response when she had contacted them about inaccuracies she noticed in the Conciliation Assessment Report. Our office reviewed Ms. N’s file and determined that Tarion had received her emails and had not returned them within a reasonable timeframe. We contacted the Warranty Services Manager on the case, and they in turn contacted Ms. N to acknowledge the delay and apologize. Ms. N was able to have a productive conversation with the Manager and reach a fair resolution to her concerns.

### The impact:

Sometimes mistakes happen and homeowners are unable to get satisfaction through the normal process. When this happens, the Ombuds office can provide the homeowner with a means to have their concerns addressed quickly.



## Late Reporting

Ms. D sent the Ombuds office a Complaint Form stating that Tarion had forgotten to include one item - leaking windows - on her 30 Day Conciliation Assessment Report. This means the item was left without a warranty finding, even though she clearly included the item on her 30 Day warranty form.

Ms. D said that the builder had promised to fix the windows, but never followed through on the promise. The windows were actively leaking in rainy weather, and she wanted Tarion to make the builder repair them. As she noted, she had submitted this item to Tarion within the timeline when such a repair would be warranted.

When the Ombuds Office reviewed the file, we could see that the window item was clearly listed on the 30 Day form and that it was left off the corresponding Conciliation Assessment Report. However, we also saw that the Conciliation Assessment report had been issued almost four years previously. When we dug deeper, reviewing emails on file, and speaking with the Tarion staff involved with the case, we learned that, prior to the inspection, when Tarion asked her to confirm which items from the 30 Day form had not been resolved by the builder, Ms. D had failed to include the windows. She listed several items clearly for the Warranty Services Coordinator but did not mention the windows.

Our review found that there were no fairness concerns in this case. We explained to Ms. D that since she didn't include the leaky windows on her list of unresolved items to be assessed at the 30 Day Conciliation Inspection, Tarion reasonably assumed they were resolved. As they were not assessed at the inspection, they could not be warranted and Tarion could not compel her builder to fix them. In addition, by the time Ms. D contacted Tarion, the warranty for this item had expired. Despite this, as a courtesy Tarion contacted the builder on behalf of Ms. D to encourage them to fix the windows.

*“Please let the staff know how much I appreciate their work on my behalf.”*

### The Impact:

Both Tarion and the homeowner have responsibilities in the warranty process. If a homeowner doesn't report issues in a timely manner, Tarion will be unable to assist them.

*“Thank you for listening to my concerns. Although I may not agree with your findings, I feel that you helped me.”*

## Decision Letter Delayed

Mr. R. strongly felt that Tarion's decision to not warrant several defects in his home was incorrect. He contacted the Warranty Services Representative assigned to his case and requested a decision letter, which he needed to challenge Tarion's assessment at the License Appeal Tribunal.

After waiting 45 days without receiving the decision letter, Mr. R filed a complaint with our office, stating that Tarion was handling his request for a decision letter poorly and requesting our assistance to obtain it.

Our office investigated Mr. R's complaint and found that, following the request for a decision letter, Mr. R had been offered mediation as an alternative to appealing through the Tribunal. Mediation was discussed with the Warranty Service Representative, but Mr. R had ultimately declined and again requested the decision letter.

At that point, Tarion stated that they would follow up, but provided Mr. R with no further information. It turns out that at the time Mr. R contacted our office, his decision letter was being processed, but Tarion had not informed him of this.

The decision letter was issued before the completion of our review but our office found that the time it took to issue it, and the lack of communication with the homeowner were fairness issues. We recommended that Tarion provide Mr. R with a written apology for the delay.

### The impact:

Homeowners often contact our office regarding situations that occurred in the past. In these cases, we can't turn back the clock to rectify the situation, but we can ensure that Tarion acknowledges their error and makes apology for it.

*“Thank you so much for all the information you have shared and for taking the time to hear my complaint and explain all these aspects.”*

## Eligibility Investigation

When Mr. K discovered a major leak in his new home, the builder told him that he would have to pay extra money to have it fixed. Mr. K had paid for a completed home, and he refused to pay extra to remedy an issue that was the builder's responsibility. He knew that builders were required to provide warranties on new homes built in Ontario.

Frustrated with his builder's lack of action, Mr. K contacted Tarion to determine whether his home was eligible for warranty coverage. Tarion confirmed that the home was not enrolled and that the builder was not licensed.

In order to determine whether the home was eligible for new home warranties, Tarion needed to complete an eligibility investigation. Mr. K was informed that the investigation process could take several months and that, while it was in process, he should repair defects as needed and keep invoices and receipts for reimbursement if the home qualified for warranty coverage.

It took some time for Mr. K to submit the information Tarion needed, but once he did, an investigator was assigned to the case and the investigation process began. While the investigation was in progress, Mr. K followed up with the investigator several times, regarding the progress of the file. Mr. K was told as early as three weeks into the investigation that it would be “wrapped up shortly” and after six weeks that it was “almost completed”.

Mr. K contacted our office with concerns about the length of time it was taking. Our review determined that the length of the investigation, 4½ months, was within the normal timeframe. We were able to reassure Mr. K that there had been no delays in the investigation process. Tarion had been working diligently to determine the eligibility status of his home. However, we found that the investigator's descriptions of the progress of the investigation, while well meaning, served to raise Mr. K's expectations unrealistically and contributed to him believing there were delays. The Ombuds office recommended that Tarion apologize for communicating unrealistic timelines.

### The impact:

As a result of our review, Mr. K received an apology from Tarion. In addition, eligibility investigators were reminded of the importance of transparent communication and the negative impact of raising homeowner expectations unrealistically. This recommendation will benefit future homeowners.

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

# 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.

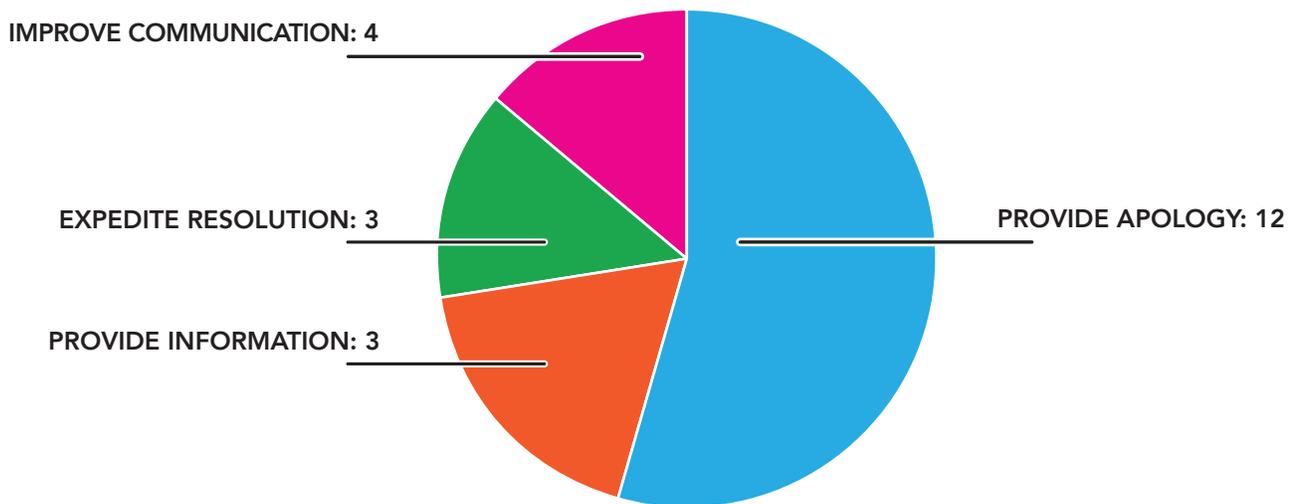
Throughout the year, our office makes recommendation for redress of fairness issues and, although Tarion has no legal obligation to follow the New Home Ombuds recommendations, all recommendations made in 2022 were accepted.

## 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 2022, the office made case specific recommendations in 11 individual cases, with some cases having multiple recommendations.

## 2022 Case Specific Recommendations



All recommendations but one, which is ongoing, have been fully 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.

The review of an individual complaint might also raise concerns about a potential systemic issue that requires further investigation. In this situation, the Ombuds will initiate an inquiry under their own authority to look more closely at the concerns and determine whether recommendations are needed. These are called "Own Motion" inquiries. In 2022, we initiated an Own Motion inquiry stemming from an individual complaint, which led to three systemic recommendations.

## 2022 Systemic Recommendations

In 2022, our office made three systemic recommendations that arose out of individual complaint reviews. In all three cases, the recommendations were for coaching for Tarion staff to ensure that they were providing appropriate information in the following areas: issuing decision letters, the breakdown of cash settlements and the chargeability of inspections.

We also conducted an Own Motion inquiry in 2022 that resulted in recommendations to Tarion, as outlined below.

In late 2021 and early 2022, our office received a total of four separate complaints regarding Tarion changing the warranty status of an item from warranted to not warranted. As we explored these complaints, we noted possible systemic issues and initiated an Own Motion inquiry to explore this further.

Our inquiry confirmed that warranty status changes can go both ways – the status can change from not warranted to warranted or from warranted to not warranted. In the former case, the change is usually initiated by the homeowner disputing the not-warranted assessment and providing additional information that leads to a re-assessment of the item and the status change. In the latter case, it

will be the builder who disputes the assessment of the item as warranted and they will provide the new information that leads to the re-assessment and status change.

We found that it is fair that both parties in the warranty process have the same ability to challenge Tarion's decision. However, we found that Tarion's communication with homeowners when builders challenged a warranty decision was inadequate.

We recommended that Tarion:

1. Proactively inform homeowners that builders can also challenge a warranty decision.
2. Develop a protocol for ensuring that homeowners:
  - a. Are informed that a warranty decision is being disputed
  - b. Receive any new information provided as part of the dispute
  - c. Are provided with an opportunity to respond before the warranty decision is changed.
3. Train all Warranty Services staff in the new protocol, once developed.

Tarion accepted and has implemented these recommendations.

# Follow up on Previous Systemic 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 implement our recommendations. In these cases, after making our recommendations, we ask Tarion to provide an implementation plan and we monitor the progress of that plan to ensure that recommendations are implemented, and the issues resolved.

This section provides information on the status of systemic recommendations, made in 2020 and 2021.

## 2020 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, making it difficult to properly review complaints. As remedy we recommended additional training for Warranty Services staff. However, even after the training was completed, we continued to note documentation issues. In 2022, Tarion made changes to their data storage system which were expected to make adding interactions to the file more efficient and we anticipated that documentation would improve as a result.

Unfortunately, the system changes have not resulted in file documentation improvements, as hoped. Our office has discussed this challenge with Tarion, and they have committed to retraining all Warranty Services staff on the documentation process and its importance.

**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.

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

This recommendation has been fully implemented.

## 2021 Recommendations

In 2021 we made 2 systemic recommendations regarding Tarion's communication with homeowners when they sign a Major Structural Defect Resolution Agreement with their builders.

To ensure appropriate communication with homeowners, we recommended that the information contained in a letter Tarion sends to homeowners be re-written for clarity and that Tarion ensure all staff understand their responsibilities for follow up when the agreement deadline has been reached.

Changes to the letters have been made and Tarion staff have been trained on appropriate follow up with homeowners. These recommendations have been fully implemented.

# 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 next steps for resolution.

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.

*“I really thank you for your help and following up today.”*



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.

*“Thank you for your support and information provided.”*

*“I’m extremely satisfied with the interaction with the Ombudsman office. My wife and I were quite surprised how quickly staff facilitated action on our file!”*

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