

TARION

OMBUDSPERSON  
OFFICE

2010 ANNUAL  
REPORT

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# ANNUAL REPORT MESSAGE



The Ombudsperson Office will continue to work with Tarion to foster the development of an effective culture of learning.

This report marks the completion of the second full year in operation of the Tarion Ombudsperson Office. The Ombudsperson is an independent office within Tarion Warranty Corporation, working to resolve complaints about unfair treatment, and making recommendations to promote fair practices. The Ombudsperson promotes and protects fairness by working with homeowners and Tarion to resolve complaints, through outreach and education, and by making systemic recommendations to improve how the corporation operates. This annual report provides a summary of activities during 2010, reports on recommendations made in 2009, and outlines plans for 2011.

The Ombudsperson Office plays a complementary role in Tarion's continuous improvement process. By working with employees to resolve complaints and debrief cases, we help prevent problems from reoccurring. I am confident that the Ombudsperson Office has helped Tarion identify causes and learn from issues experienced during the year. Based on this observation, I find that Tarion could further improve its processes by developing a proactive approach to responding to problems and errors.

Research shows that high-performing organizations tend to have cultures that promote learning from errors; when errors are detected, managed, and consequences are reported, valuable learning occurs. Effective error management does not end with the prevention of errors; rather, its focus is on using the incident as a starting point to improve how the company works. Benefits of an improved culture of learning include increased transparency, innovation, and improved quality and service.

Tarion is effective at responding to complex technical problems and individual homeowner complaints. However, I am concerned that the innovative solutions applied by individual employees to successfully resolve issues are not being shared. Because Tarion does not have an effective process in place, knowledge about how cases can be better handled is lost. At the individual and work team levels, employees need to feel that they can make mistakes, learn from them,

implement change and be supported by management. At the departmental and interdepartmental level, Tarion needs to develop an effective debriefing process on complex cases focused on improving future practice.

During 2011, the Ombudsperson Office will continue to work with Tarion to foster the development of an effective culture of learning.

## Thanks

The Ombudsperson Office has achieved its successes this year by working with all of the departments within Tarion. I would like to extend my thanks to all the employees who the Ombudsperson Office interacted with this year. Fair solutions have been found as a result of their professionalism, collaboration and commitment to service. I look forward to continuing to work together.

A handwritten signature in black ink, appearing to read 'Ian Darling', written in a cursive style.

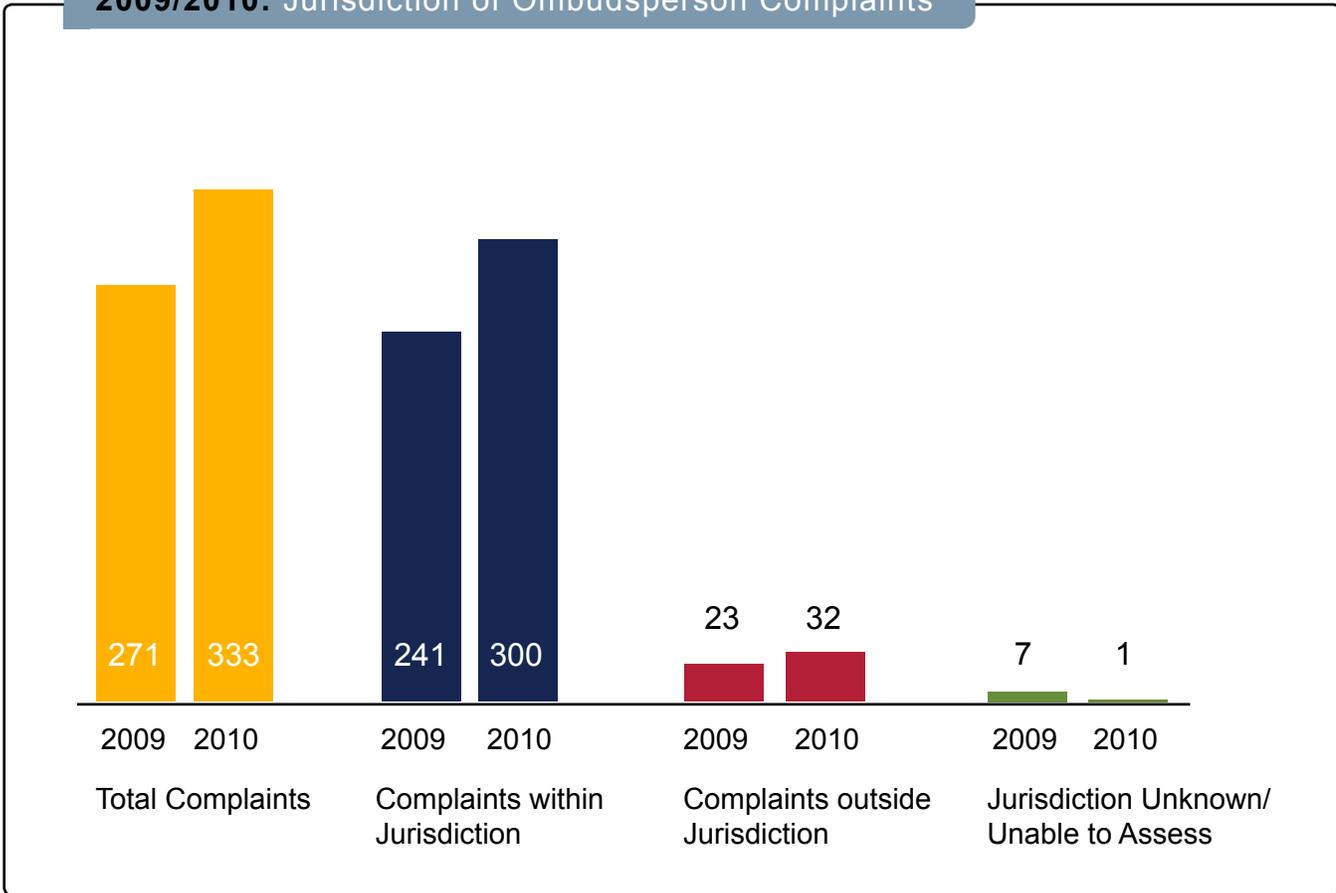
Ian Darling,  
January, 2011.

# STATISTICS

The Ombudsperson Office received 333 complaints and inquiries in 2010. This is an increase over 2009, but represents a natural growth due to heightened awareness of the office. Of the 333 complaints, 300 fell within the jurisdiction of the office (as outlined in the Terms of Reference which can be found on [www.tarion.com](http://www.tarion.com)). The majority of complaints that were outside the jurisdiction of the Ombudsperson

Office were related to Tarion, but were excluded from our mandate—complaints from builders, for example. Jurisdiction was recorded as unknown in cases where the Ombudsperson Office was unable to assess the nature of the complaint.

**2009/2010: Jurisdiction of Ombudsperson Complaints**



**Type of Complaint**

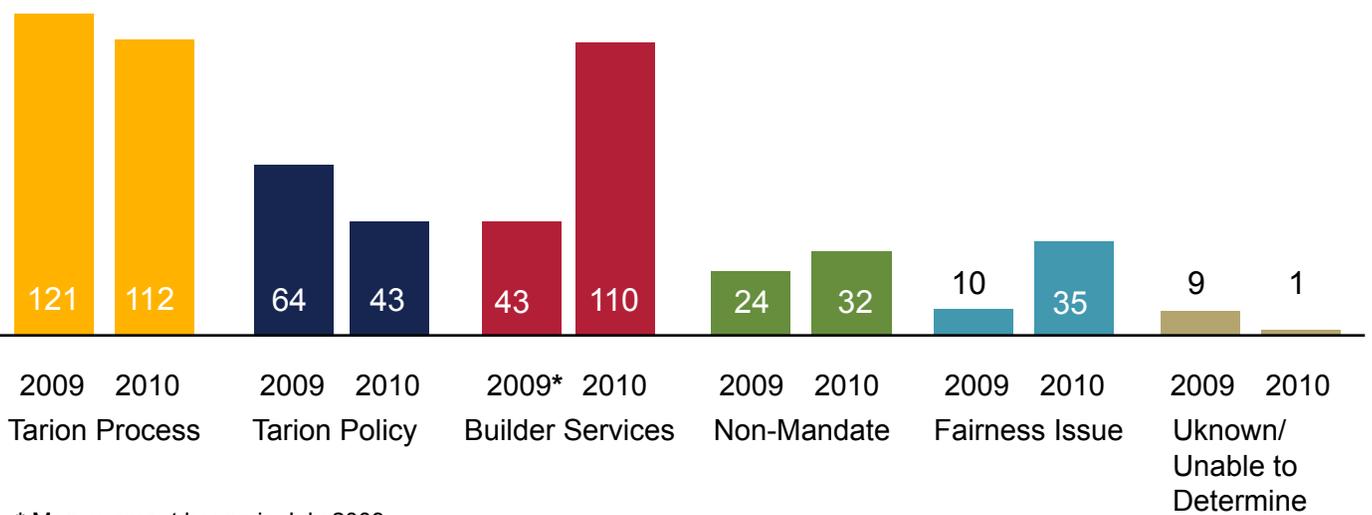
When the Ombudsperson Office receives a request for information, inquiry or complaint, it assesses the concern, and tracks the issue(s) presented. Tarion Processes and Builder Services complaints were the most common categories in 2010. The Ombudsperson Office began recording Builder Services complaints at the start of the 2009 third quarter—thereby making year-to-year comparison difficult. Prior to recording these complaints as a distinct category, they were recorded as complaints about Tarion Processes. Creating a distinct category is a more accurate representation of the nature of the complaints.

Builder Services refers to complaints about the service provided by builders to homeowners. Although Builder Services complaints are not directly related to Tarion, the corporation has a role in ensuring that builders meet their obligations under the warranty, and educating builders regarding effective service.

The number of Builder Services complaints suggests that Tarion has an opportunity to increase its education and outreach activities in this area.

2010 also saw an increase in the number of complaints determined to be fairness issues. This is due to greater consistency in defining case issues, and as a result of work done to implement new case management software within the Ombudsperson Office.

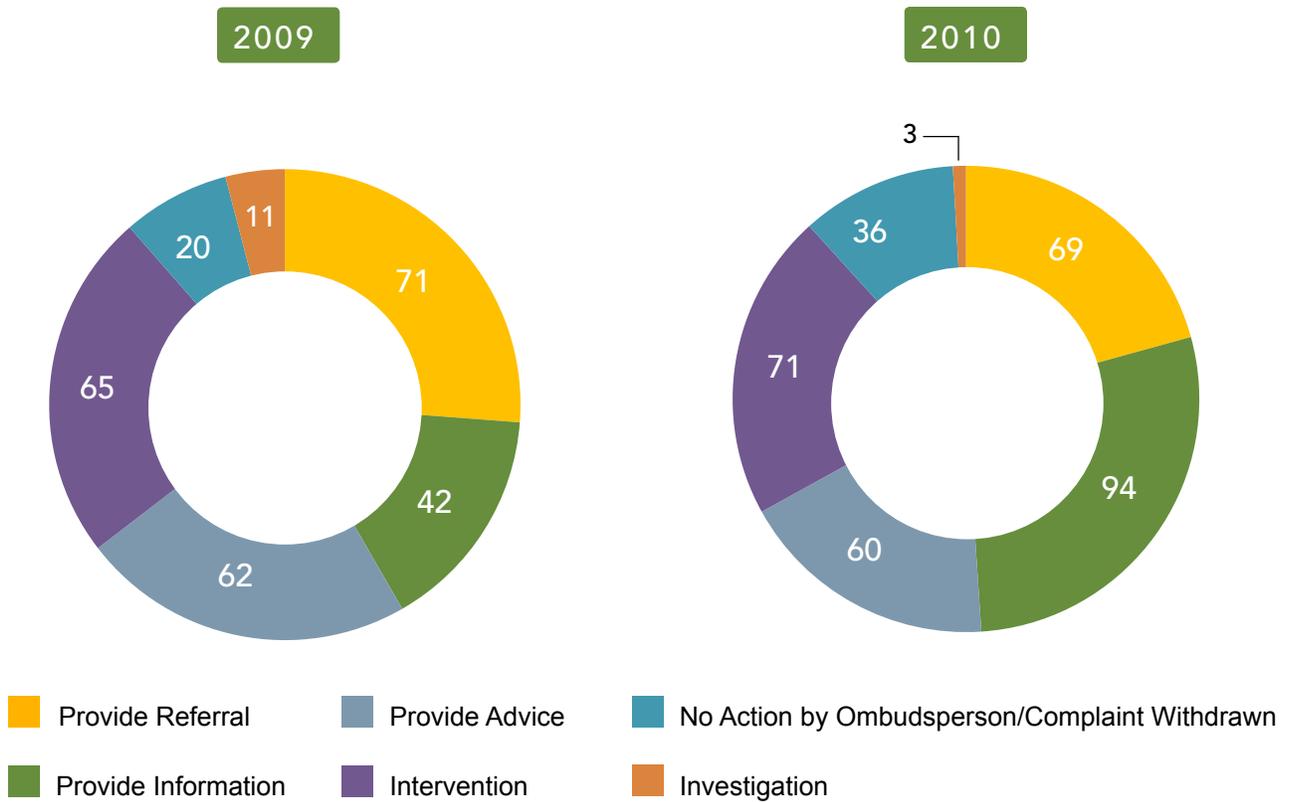
**2009/2010: Types of Complaints Received by Ombudsperson**



**Action**

Action refers to how the Ombudsperson dealt with the complaint. This table shows the important role the Ombudsperson Office plays in informally resolving complaints, by providing information, referral and advice. Intervention refers to cases where the

Ombudsperson Office attempts to resolve complaints using a variety of conflict resolution techniques and strategies. Investigation refers to formal investigations which result in findings and recommendations.



**Resolution**

This table shows how the Ombudsperson resolved cases, and illustrates where the complaint was resolved in the Ombudsperson complaint process.

ACTION		# of Cases	
		2009	2010
<b>Intake</b>			
	Referral - Premature	57	51
	Abandoned by Complainant	29	34
	Referral/Information - Complaint out of jurisdiction	18	25
	Information - Premature	14	67
	Referral/Information Complaint Unfounded	5	17
	Ombudsperson Office withdrew	5	2
	In Litigation	0	0
	Under Appeal	0	1
<b>Early Resolution</b>			
	Advice to Complainant	47	48
	Review - Unfounded	35	29
	Facilitated Solution	22	16
	Review and Recommendation	20	16
	Early Resolution	5	24
	Compromised Solution	3	0
<b>Investigation</b>			
	Investigation - Unfounded	6	0
	Investigation and Recommendation	5	3
	Total	271	333

# CASE STUDIES

The Ombudsperson also reports on case activity. These case studies show how the office works, and provide an opportunity to demonstrate learning gained from helping to resolve complaints.

## Case Study #1

### Impact of Holdback on Warranty Coverage

A homeowner contacted the Ombudsperson Office with a concern about his claim. He had a custom-built home with a holdback—a common practice in custom-built homes. A holdback is a condition of the contract where money is withheld until a specified step in the home's construction is met. In these cases, Tarion will assess claimed defects and if warranted will consider both the value of the claim and the holdback. If there is a balance remaining on the claim, Tarion will either pay that amount to the homeowner in the form of a cash settlement, or complete the work up to that dollar amount. If the claim's value is less than the holdback, the homeowner will be considered to have a benefit, and will not receive a settlement or repairs.

The homeowner indicated that Tarion had conducted a conciliation inspection and warranted a number of items. The builder refused to do any additional work in the home because he was still owed money from the holdback. The complaint originated when Tarion cancelled the claim inspection because the homeowner was considered to have a benefit.

The Ombudsperson Office reviewed the claim file and identified a problem with the information provided to the homeowner. The Warranty Assessment Report identified which items were warranted, but stated that the claim would be considered resolved because the cost to remedy the items was less than the holdback. The report provided a high-level assessment that the warranted items were less than the total for the holdback, but did not provide an individual costing for each warranted item. Tarion stated that they would deduct the amount of the warranted items from the holdback when considering the benefit, or they would proceed with the warranty once the homeowner paid the holdback.

The Ombudsperson Office agreed that it was appropriate to consider the holdback. We agreed that a claim inspection was not necessary because Tarion could establish a cost for each repair based on the information presented at the conciliation inspection. We determined that it was unfair for Tarion to provide a blanket statement that the warranted items were less than the holdback without providing rationale for the decision. The Ombudsperson Office requested that Tarion provide a cost breakdown of the warranted items and show how they were considered. The information was sent to the homeowner, along with an indication of how Tarion would deal with the holdback for any subsequent claims.



### Comment:

In this case, the Ombudsperson Office was satisfied that the original decision was correct; however, the fairness of the decision was undermined because Tarion did not provide reasons to support the decision. It is important to make the right decision—but it is equally important to provide reasons for the decision and demonstrate that it is correct.

This case study deals with custom homes complaints, which tend to be quite complex. Holdbacks and how they impact warranty coverage assessment tend to be a common concern in custom homes. It may, therefore, be worthwhile for Tarion to develop a publication explaining how it handles these cases. This can help

homeowners and builders anticipate potential problems before they enter into a contract for a custom-built home.

## Case Study #2

### Considering all the Available Evidence

A homeowner moved into a condominium unit and submitted his 30-Day Form. He contacted Tarion during the Request for Inspection timeframe indicating that he had already completed the repairs because he did not want to wait for the Tarion timelines. He was advised that he needed to follow the process outlined in Tarion's Customer Service Standard. One month later the homeowner contacted Tarion indicating that he believed his concerns were health and safety violations. During the assessment of the problem, the homeowner informed Tarion that his floors and ceiling were "a disaster" and that he and his builder had arranged to reduce the purchase price for the unit so that the homeowner could fix the problem. The homeowner then hired the builder's contractor to make repairs. The purchase price was amended, and the homeowner arranged for the repairs himself because he felt that he could not wait the 120-day builder repair period. The homeowner wanted compensation from Tarion for the repairs/modifications to his unit. An investigative inspection was conducted which concluded that the homeowner made extensive renovations and completed repairs with their own contractor. The alterations were made by the homeowner without the builder's involvement. These changes meant that the Tarion warranty could not cover defects to the altered areas.

The homeowner requested a Decision Letter, and contacted the Ombudsperson Office shortly before receiving it. He believed the Tarion Field Claim Representative (FCR) was biased, the investigative report was amateurish, that the FCR handled his case in an insincere and deceptive manner and that the Call Centre gave him contradictory statements. Our office thoroughly reviewed the substantial documentation in the file. Contrary to the homeowner's statements,

we found no evidence of bias, and determined that Tarion's communication about the warranty process—and implications of making changes—were clear and consistent. The Ombudsperson also determined that Tarion staff had considered all the available evidence, including the Agreement of Purchase and Sale and the contracts for the alterations. The Ombudsperson Office provided these findings to the homeowner.



### Comment:

In this case Tarion employees attempted to assist the homeowner, however, they were limited in what they could do because the significant interior alterations could not be assessed under the warranty. The homeowner was frustrated that Tarion had asked for additional information but had not granted his claim. Tarion's actions in this case provide an example of best practices in decision making. Rather than dismissing the case on the face of the initial facts, Tarion staff examined all the available evidence before making a determination.

This case also serves as a caution to homeowners. Tarion is governed by the *Ontario New Home Warranties Plan Act*. The Act establishes the warranties and sets limits for how Tarion can act. In this case, the actions of the homeowner caused the renovated portions of the home to be removed from warranty coverage. I encourage homeowners to be aware of their rights and responsibilities under the warranty plan. Tarion can be very effective in resolving warran-

ty defects; however, that effectiveness is limited when homeowners do not follow the process as outlined in the Tarion Customer Service Standard.

### Case Study #3

#### Condominium – Yours, Mine or Ours?

A condominium unit owner contacted the Ombudsperson to complain that his air conditioner condensate line was leaking into his unit. He informed us that, although the line had recently been cleared, a clog in a common pipe was causing the latest problems.

He went on to say that the problem was causing damage to his hardwood floors, and was occurring in other condo units. The homeowner stated that he wanted an inspection from Tarion immediately to be sure that it would not recur.

Air conditioning systems are usually a common element issue and should be reported to the condominium board or property management company. Common element defects are resolved through a common element claims process. Based on a preliminary review of the file, it appeared there may have been an unreported common element problem. The Ombudsperson Office referred the issue to both the unit and common element branches of Tarion's Claims Department, requesting that Tarion contact the homeowner to understand the concerns, and consider if an investigative inspection was needed to determine the origin of the leak and if other units were affected.

Tarion decided to perform a site visit the next day with both a unit and common element representative, along with representatives from the property management company. They discovered that the builder had been there the previous week and had removed a clog in the unit owner's portion of the system. It was determined that the problem was due to a lack of homeowner maintenance and that there had been no recurrence. Tarion later found that there was no evidence to suggest that the common pipe was the culprit and that the same concern was not occurring

in other units. Tarion provided a report to the homeowner to this effect.

Our office advised the owner that our review indicated Tarion had acted appropriately in quickly responding to his concerns, speaking with his builder and property manager, reviewing all available documentation, and authoring a written response with their conclusions.



#### Comment:

This case is an example of the important role of early resolution within the Ombudsperson Office. Upon receipt of the complaint, the Ombudsperson Office was able to quickly assess the status of the complaint, and refer the issue to the appropriate departments within Tarion, in order to ensure a comprehensive response to the concerns. This case also demonstrates the value that an internal Ombudsperson can add, as well as the benefit of proximity of the Ombudsperson to the organization itself in ensuring a timely response to concerns.

### Case Study #4

#### For Your Reconsideration

A homeowner contacted the Ombudsperson Office with concerns about errors in Tarion's Warranty Assessment Report. They believed these errors contributed to Tarion considering certain items to be non-warranted. The homeowners expressed concern that the Warranty Assessment Report stated they had accepted a cash settlement from the builder for one of

the items prior to the claim inspection. The item was deemed non-warranted because of the settlement. The homeowners stated that the cash settlement was to compensate for inconvenience associated with problems with their floors, not for their repairs. The homeowners provided evidence that corroborated their version of events. The homeowners also stated that they felt that an item which was assessed as non-warranted because it was considered a common element issue should be considered a unit concern. They chose to appeal the Warranty Assessment Report. Tarion sent them a Decision Letter so that they could appeal to the Licence Appeal Tribunal (LAT).

The Ombudsperson's Office reviewed the homeowners' file. Upon review, we determined that the evidence available supported the homeowners' assertion that they were compensated solely for their inconvenience. The Ombudsperson recommended that Tarion reconsider the decision in light of the evidence in the file, and to consider the Agreement of Purchase and Sale to confirm the unit boundaries.

Tarion reviewed the evidence and changed its assessment. Tarion contacted the builder to advise them that the Decision Letter may be rescinded due to the evidence, and asked that they consider repairing the items prior to going to the Tribunal. As a result of the Ombudsperson's intervention, the homeowner was reimbursed the \$100 LAT appeal fee and their conciliation fee. The homeowners received a settlement from their builder, and the need to attend the Licence Appeal Tribunal was avoided.

Comment:

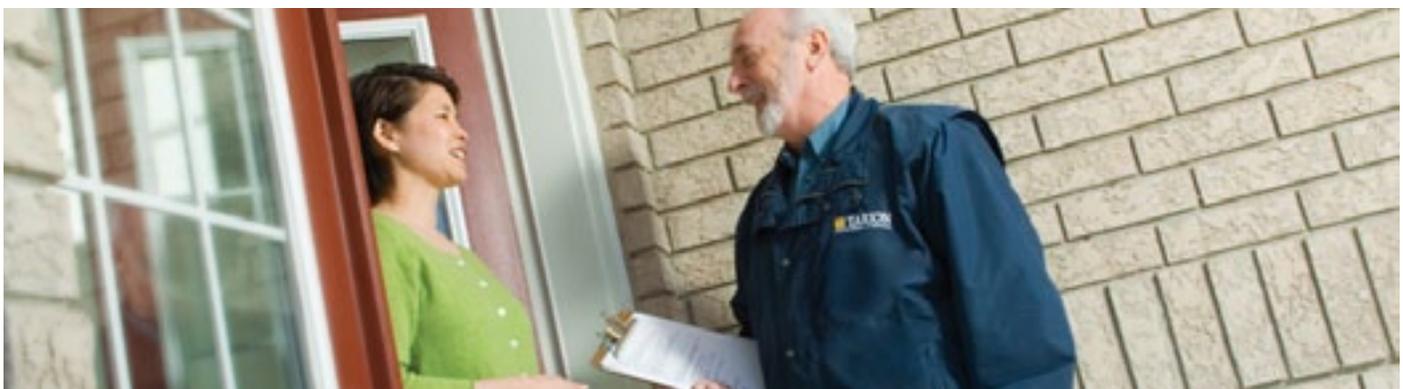
In this case the Ombudsperson Office determined that Tarion erred in its assessment. Tarion had not considered all the relevant information in making the assessment. The Ombudsperson recommended that Tarion reassess the decision. This helped to avoid an unnecessary and expensive appeal to the Licence Appeal Tribunal.

**Case Study #5**

**When Should Tarion Involve an Independent Expert?**

The Ombudsperson Office was contacted by a homeowner who was unhappy that Tarion had reneged on a commitment to have an independent expert review their concerns. Before calling the Ombudsperson, they had a conciliation inspection, were dissatisfied with the results, and complained to Tarion. A Field Claim Manager heard their complaint and rescheduled the inspection with a different Field Claim Representative (FCR). The homeowner was notified that a re-inspection would be scheduled and that an expert would be contracted to attend the inspection. After the re-inspection, the homeowner contacted our office concerned that the expert did not attend as previously advised.

The Ombudsperson Office was concerned that the expert did not attend the inspection as promised.



We contacted the Field Claim Manager (FCM), who explained that because a new FCR would re-inspect the defect, it was premature to include an expert. Tarion decided that an expert would only be required if the item was deemed not warranted; however, this had not been communicated to the homeowners. The Ombudsperson Office found that it was reasonable for the new FCR to conduct the reassessment alone; however, the homeowners expected that an expert would attend. The Ombudsperson Office recommended that the FCM apologize to the homeowners for the miscommunication, and reiterate that Tarion would conduct another inspection with an expert if the homeowners were dissatisfied with the repairs. Tarion warranted the deficiencies following the re-inspection, and the builder made repairs to the defect. The homeowners were dissatisfied with the repairs. Tarion contracted with an expert to review the workmanship, and provide a report on the defect and method of repair.

Comment:

In this case the Ombudsperson determined that it was reasonable for Tarion to conduct a reassessment before hiring an independent expert. It was unfair though that this decision was not communicated to the homeowner. The homeowner was dissatisfied with Tarion's service following the first inspection. The lack of communication about the expert further undermined Tarion's credibility in the homeowner's eyes.

**Case Study #6**

**An Unexpected Change**

A homeowner contacted the Ombudsperson Office to complain that Tarion had reversed its decision. The homeowner stated that Tarion had conducted a conciliation inspection and issued a Warranty Assessment Report. Two weeks after the assessment, the homeowners received an updated Warranty Assessment Report where several items which were originally warranted were overturned. The report stated that the decision was altered because of new information provided by the builder. The homeowners were upset because they did not expect the revised report, did not know why the decision was changed, and because it appeared that Tarion was refusing to provide them with the additional information.

The Ombudsperson reviewed the file and spoke directly with the Field Claim Representative (FCR) in order to clarify the issues. The FCR indicated that the builder had provided additional information after the first Warranty Assessment Report was issued that led to a change in the findings. The FCR also said that he had not confirmed the information with the homeowners, and indicated that Tarion would issue a Decision Letter if they disagreed with the assessment. The Ombudsperson cautioned that a Decision Letter was premature at this point, and requested that the FCR share the new information with the homeowners and allow them to comment on the new evidence. The Ombudsperson also asked the FCR to reconsider the decision if the homeowner's information was more reliable than that provided by the builder. The FCR met with the homeowners, discussed the material and came to a new assessment based on the information and comments provided by the homeowners.

Comment:

This case study demonstrates that sometimes being fair may take longer, but it leads to better resolutions. The FCR should have reviewed the information with the homeowners in order to ensure that it was



accurate, and allow them to provide their perspective.

This case also provides an example of the informal coaching role the Ombudsperson plays in dealing with individual cases. During the conversation with the FCR, the Ombudsperson discussed how to ensure fairness by obtaining complete information, sharing the information with both parties, and giving each party an opportunity to refute the other's claims with evidence. In addition, this case study demonstrates how important it is for Tarion to provide reasons for the decision.

### Case Study #7

#### How to Assess a Settlement Offer?

A homeowner contacted our office concerned about a Decision Letter related to a cash settlement. Tarion had warranted a number of claim items and had agreed to provide a cash settlement so the homeowner could contract the work directly. The homeowner reviewed the cash settlement offer and scope of work and determined that she could not make a decision based on the information provided. She asked Tarion to provide a revised scope of work. Tarion indicated that they believed the settlement offer was adequate and would therefore not revise the scope of work. They offered a decision letter so that she could appeal to the Licence Appeal Tribunal (LAT).

In the compliant, the homeowner indicated that the scope of work did not contain enough information for her or her contractor to determine if the settlement amount was fair. The homeowner indicated that she wanted to show the scope of work to an independent contractor so she could determine if she could get the work done for the amount offered. The Ombudsperson Office reviewed the file and agreed that the homeowner could not assess whether the offer was fair based on the information provided. The Ombudsperson Office provided an opinion to the Claims Department that the information was not sufficient, and asked the homeowner to notify Tarion as to which claim items required additional information.

The Ombudsperson Office had a number of discussions with Tarion to ensure that the homeowner received a properly revised scope of work. After this intervention, the homeowner received a revised cash settlement which contained the information she needed. The homeowner was able to get a proper quote based on the revised information, accepted the cash settlement and cancelled her LAT appeal.

#### Comment:

In its 2009 Annual Report the Ombudsperson made recommendations regarding fair settlement offers. Since the release of that report, Tarion has made progress in addressing the recommendations and improving fair practices. This case study also deals with settlement offers—but it predates the implemented changes. It is included in the report to demonstrate the role the Ombudsperson Office can have in identifying concerns, recommending decisions be reconsidered, and in preventing an unnecessary appeal to the Licence Appeal Tribunal.

# RECOMMENDATIONS

The mandate for the Ombudsperson includes resolving individual complaints, as well as addressing systemic issues based on themes identified in resolving complaints. This section of the report deals with systemic recommendations. A recommendation is considered systemic when a number of homeowners are affected by a Tarion process, and the concerns do not relate to an individual decision or action.

## 2009 Recommendation Follow-Up

In the 2009 Annual Report, the Ombudsperson made five systemic recommendations, and in response Tarion made a series of commitments related to the implementation of the recommendations. The Ombudsperson Office is in regular communication with the operational departments regarding implementation of the proposed recommendations. Tarion has met all but one of the commitments made in response to the recommendations. The outstanding commitment relates to updating letters to homeowners to provide information about Tarion's complaint process. Tarion has advised that this recommendation will be completed in the Spring of 2011. I thank Tarion for its efforts to implement the recommendations, and look forward to being able to report on the successful implementation of the one outstanding commitment.

## 2010 Recommendations

During 2010, the Ombudsperson made a series of recommendations related to Decision Letters, and the Emergency and Investigative Inspection processes. I am pleased to report that Tarion is proactively working to address the recommendations; therefore, I have chosen not to include them in this report. The Ombudsperson will continue to monitor the implementation of the recommendations.

### 1. Gaps in Special Seasonal Warranty Coverage

During 2010, the office received a number of complaints related to defects that occur in Special Seasonal items. Special Seasonal items (such as, the completion of the new home's final grading, landscap-

ing (laying sod, etc.) and the installation of driveways, patios and walkways) are exceptions within the Customer Service Standard. The Homeowner Information Package states that:

For homes with a date of possession on or after May 1, 2004:

The builder has 270 days of "seasonable weather" from the date of possession to complete any warrantable Special Seasonal items reported on a 30-Day or Year-End Form (unless a longer period within the time limits permitted under applicable municipal agreements was negotiated between the builder and the homeowner).

"Seasonable weather" is the period between May 1 and November 15 (inclusive) of any given calendar year. There are 199 days of seasonable weather in one calendar year. For details and examples on how to calculate "seasonal weather" days, please refer to Builder Bulletin 42.

If the item is not installed or the repair is not completed by (i) the 270th day of seasonable weather from the date of possession; (ii) another date agreed between the homeowner and the builder, granting the builder a longer period; or (iii) the date permitted for such installation by any applicable municipal agreement if earlier than the date agreed between the homeowner and the builder, then the homeowner may contact Tarion and request an assessment within 30 days. If the item is determined to be warrantable, Tarion will work with the homeowner directly to settle the matter.

The Ombudsperson received a number of complaints from homeowners who had defects in Special Seasonal items, but were told that the item was outside coverage. In these cases, Special Seasonal items were reported as incomplete on Year-End Forms, and the builder completed the installation during the Special Seasonal timeframe. It is common for Special Seasonal items to be completed after the expiry of the One Year Warranty. Tarion does not

assess these items as part of the 30-Day or Year-End warranties because the Special Seasonal timeframe has not expired.

If the Special Seasonal item were to develop a defect once installed, current practice creates the effect that there is no warranty protection for that defect because it is reported outside of the first year of possession of the home, rather than one year following its installation. The effect is that the Special Seasonal exceptions allow for items to be completed after the expiry of the One Year Warranty, without any protection if those items later prove defective. We are concerned that the current practice creates an unfair situation by eliminating the One Year Warranty on material defects on Special Seasonal items.

Tarion has confirmed that it could re-inspect a Special Seasonal item only if the homeowners had previously requested an inspection of the unfinished item. This relies on a technicality—whether the property was inspected for a different matter (non-complete Special Seasonal item) rather than the defect itself. It also creates a situation where Tarion is able to act in a limited number of cases due to a technicality (a previous inspection for an incomplete item), even though the previous inspection is related to a different matter.

The Ombudsperson recommends that Tarion examine the Special Seasonal exception and its impact on warranty coverage. I further recommend that Tarion consider a solution that ensures that Special Seasonal items receive the same warranty coverage as the rest of the home.

## 2. Best Practices for Assessing Chargeability of Conciliations

In the two years of the Ombudsperson Office's existence, we have received a number of complaints where part of the issue involves Tarion's decision to deem a conciliation chargeable. Tarion's rules related to chargeability for conciliations are outlined in Builder Bulletin 42, which states that:

*A chargeable conciliation means a conciliation in which:*

- *There are items identified as warranted by Tarion in a Warranty Assessment Report;*
- *The builder was not denied reasonable access by the homeowner to rectify the problem (see "Reasonable Access For Repair" ...); and*
- *The builder could have avoided the conciliation by attending to the items raised in the homeowner's Statutory Warranty Form.*

*Even if only one item is confirmed through the conciliation process by Tarion to be warranted, whether major or minor in nature, the conciliation will be considered chargeable to the builder. A conciliation may be deemed "not chargeable", if one or more of the following exceptions apply to every item determined to be warranted in the Warranty Assessment Report:*

- 1. The builder can demonstrate that the homeowner denied reasonable access to repair or resolve the warranted item before the conciliation; or*
- 2. A conciliation is conducted by Tarion because the builder and the homeowner disagree about the method or timing of the repair to an item that the builder has previously agreed is warranted, and Tarion supports the builder's recommendation; or*
- 3. The builder can show (a) that it has a history of satisfactory after-sales service to homeowners; and (b) by way of a written acknowledgement from the homeowner, that the homeowner had previously confirmed they were satisfied with the state of the item based on the builder's repair or that the dispute relating to the item was otherwise resolved by the builder. As a result, the builder was completely satisfied that the item had been resolved and took no further action in respect of the item prior to the conciliation.*

Based on the complaints the Ombudsperson has reviewed, it appears that in many cases homeown-

ers are dissatisfied that a case is determined as non-chargeable, primarily because they are given no indication as to why. Homeowners frequently complain that decisions related to chargeability are made without consultation and occasionally on inaccurate grounds—particularly when Tarion is not transparent with the decision, or does not consult with the homeowners to verify information provided by the builder.

Chargeability is an internal designation used by Tarion. It is one of the measures used to monitor builder compliance with the Customer Service Standard. In many cases, decisions are made without consulting homeowners or providing them with an opportunity to comment. Homeowners' needs are not seen as relevant to the deliberations. Homeowners, however, view a chargeable conciliation as Tarion finding fault for warranty work not being completed. We have received concerns that homeowners feel that Tarion is finding that it is the homeowner's fault when repairs are not completed.

Therefore, the Ombudsperson recommends that in order to ensure 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 if information provided by builders is accurate, and understanding if there are any mitigating circumstances that Tarion should be aware of in making their determination. Further, Tarion should make it a practice to ensure that if exceptions are made to chargeability beyond what is outlined in Builder Bulletin 42, the reasons for the exceptions are clear to all parties.

### 3. Conciliation Cancellations

The Ombudsperson Office has received several complaints from homeowners stating that Tarion unilaterally cancelled their conciliation inspection. Upon further review it appears that these cancellations were not unilateral, but rather occurred, in each case, as a result of a conversation between a Tarion Field Claim Representative (FCR) and the homeowner before the

conciliation was to take place. In 2010 Tarion implemented a process designed to resolve warranty complaints before conciliation inspections are necessary. This process begins with FCRs contacting homeowners after they have made a request for conciliation to provide information about the warranty process, and initiate and facilitate conversations between the homeowners and their builders in order to resolve outstanding defects.

If the builder and homeowner can come to an agreement to repair reported defects, and the conciliation inspection can be cancelled, then the FCR advises a Tarion Claim Service Representative to notify the scheduling department of the request to cancel the inspection. When the homeowner decides to cancel a conciliation without a builder/owner agreement (for instance if they decide that they do not want to lose the conciliation fee, or the work has already been completed), the FCRs inform the scheduling department of the cancellation.

The current practice is that if an agreement to repair reported defects is made between the builder and homeowner as a result of this process, and the builder then does not honour obligations by the date stated in the agreement, Tarion will re-open the case and re-book the conciliation. If homeowners indicate that they feel a conciliation was cancelled in error, the inspection would be reinstated if appropriate.

However, the current process does not ensure homeowners are provided with enough information to make an informed decision about the impact of cancelling an inspection. According to the *Ontario New Home Warranties Plan Act*, if a homeowner cancels a conciliation, all the items on the claim form are deemed withdrawn and cannot be reinstated. When homeowners call the Contact Centre to cancel an inspection, they are informed of the consequences of cancelling the inspection. This information is not consistently provided when FCRs receive the request to cancel an inspection. If a conciliation is cancelled as a result of Tarion reaching out before the conciliation as per this new process, homeowners need to be

informed that their issues are withdrawn and the case is closed.

This information should always be clearly given to the homeowners prior to them making a decision to cancel an inspection. Homeowners must be informed of the conciliation/claim process, as well as the fact that their claim is withdrawn should they choose to cancel the inspection.

Therefore, the Ombudsperson recommends that when homeowners cancel conciliations, Tarion must inform them of the implications, thereby ensuring informed consent. Tarion must further ensure that all departments that receive requests to cancel inspection provide consistent and accurate information to homeowners.

# MANAGEMENT RESPONSE



Guidelines are developed, reviewed and modified with specific consideration given to the Ombudsperson's recommendations.

It is part of the mandate of the Ombudsperson Office to identify complaint trends and systematic issues, and to recommend improvements. On behalf of the Board of Directors, Tarion management would like to express its appreciation for this opportunity to respond to the recommendations made in the 2010 Ombudsperson Annual Report.

## 1. Possible Gaps in Special Seasonal Warranty Coverage

Ombudsperson Recommendation:

*The Ombudsperson recommends that Tarion examine the Special Seasonal exception, and its impact on warranty coverage. I further recommend that Tarion consider a solution that ensures that Special Seasonal items receive the same warranty coverage as the rest of the home.*

Response:

In 2011, the Claims Department will review the Special Seasonal exception and the possible gap in warranty coverage described. If a gap in coverage is identified, the Claims Department will formulate a plan to resolve the gap and a timeline for implementing a solution. Depending on the resolution options (e.g., if a regulatory change is required), a solution may not be possible in 2011.

## 2. Best Practices for Assessing Chargeability of Conciliations

Ombudsperson Recommendation:

*The Ombudsperson recommends that in order to ensure decisions are accurate and transparent, Tarion should identify and develop best practices for what determines a chargeable or non-chargeable conciliation. These practices should include consulting with homeowners to verify if information provided by builders is accurate, and understanding if there are any mitigating circumstances that Tarion should be aware of in making their determination.*

*Further, Tarion should make it a practice to ensure that if exceptions are made to chargeability beyond what is outlined in Builder Bulletin 42, the reasons for the exceptions are clear to all parties.*

Response:

In 2011 the Claims Department will review best practices for determining if a conciliation should be considered chargeable or non-chargeable. Guidelines will be developed which will include the Ombudsperson's recommendations. The Claims Department will develop a timeline for the review. The project will commence in 2011 but implementation may not be complete until 2012.

## 3. Conciliation Cancellations

Ombudsperson Recommendation:

*The Ombudsperson recommends that when homeowners cancel conciliations, Tarion must inform them of the implications, thereby ensuring informed consent. Tarion must further ensure that all departments that receive requests to cancel inspection provide consistent and accurate information to homeowners.*

Response:

In 2011, the Claims Department will review the experience of Field Claim Representatives and their contact with homeowners and builders after the homeowner's request for conciliation, but before any conciliation inspection takes place. The guidelines in place will be reviewed and modified to reflect any best practices that are identified, and specific consideration will be given to the Ombudsperson's recommendations.

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