

2012 Tarion
OMBUDSPERSON
Annual Report



TABLE OF CONTENTS

Annual Report Message	1
Ombudsperson Operations	3
Statistics	5
Case Studies	9
Recommendations	14
Management Response	16

ANNUAL REPORT MESSAGE



While we continue to focus on early complaint resolution, we have also made recommendations on how to improve the fair outcomes of more complex cases and systemic issues.

2012 Overview

This annual report covers the activities of the Tarion Ombudsperson for 2012, during which we continued our focus on complaint prevention by early resolution, complaint tracking, identification of issues and advice to complainants regarding how to resolve their concerns. This approach allowed the Ombudsperson Office (the Office) to play an important role in resolving issues at an early stage. By focussing on early and informal resolution, the Office is able to resolve issues quickly, while using formal investigations to address more complex cases and systemic issues.

The evolving nature of complaint issues

In the four years since the office was established we have seen an increasing awareness of the importance of fair treatment in Tarion's actions and decisions. We have also seen an evolution in the type of concerns brought to our office. When the office was first established, one of the most common concerns was with Tarion's decisions not to accept late submissions of warranty forms. In 2012, this issue rarely presented itself. This change is reflective of an evolution in how Tarion deals with late forms, along with the creation of a process for homeowners to manage form submission online.

Since 2009, the Office has observed that Tarion has become more effective in reaching out to homeowners and builders before an inspection to identify and resolve issues before the inspection occurs. This approach has helped builders and homeowners resolve warranty concerns. Settling easily resolved issues has reduced the number of conciliation inspections and now only the most complex cases go to conciliation.

This has changed the nature of the complaints directed to the Ombudsperson. It is our observation that the issues we see are more complex, and the parties become deeply entrenched through the warranty process. This presents a challenge in finding effective resolutions to complaints.

We hope that our continued focus on early resolution can provide opportunities to prevent parties from becoming entrenched in conflict.

We anticipate that the nature of the concerns we receive will continue to evolve. We look to provide a complaint resolution service that anticipates these changes and provides feedback about complaint trends to Tarion.

Opportunities for improvement

While we are happy to see that Tarion continues to improve its operations, it is important to understand the underlying causes of consumer dissatisfaction. Each year the annual report includes case studies selected to highlight how the office functions. The case studies included in this report represent some of the factors which are most likely to result in a complaint to our office.

The opportunities for improvement demonstrated in the case studies are:

• Improved decision-making

- We see the impact of problems caused by flaws in decision-making – exemplified by cases where Tarion does not establish a connection between the decision and the basis for the decision; does not provide clear reasons for decisions; or attempts to make decisions despite missing information.

• Understanding fairness

- We see cases where Tarion employees state that a homeowner has been treated fairly because the outcome is correct. This is a flawed assumption; that fair treatment is measured by the outcome of a case, without understanding the importance of ensuring that the process is fair and the people involved are treated fairly.

ANNUAL REPORT

MESSAGE (continued)

- **Reduce unnecessary delays**

- Delays caused by improperly handling of information provided by the homeowner, by difficulty in bringing a case to conclusion or by repeatedly extending customer service timelines to allow builders multiple opportunities to resolve issues create unfair situations for homeowners.

- **Improved internal communication about cases**

- We've seen cases of staff not communicating when a file is transferred, poor record keeping, and staff not reading case files.

- **Hearing from both sides of a dispute before making a decision**

- Accepting one party's version of events without hearing from the other side.

We will work with Tarion to review the case studies and encourage Tarion to identify the root cause of complaints.

Follow-up on implementation of recommendations

We continue to refine the Ombudsperson complaint process and to improve how we monitor implementation of our systemic recommendations. Previous reports identified concerns with Tarion falling behind on its commitments to implement changes following recommendations from the Office. During 2012, the Ombudsperson worked with management to improve the process by which Tarion responds to recommendations, and subsequent monitoring of their implementation. I am pleased to report that these efforts have resulted in an improved monitoring process.

Thanks

The Ombudsperson Office has achieved its successes this year by working with employees from every department within Tarion. I would like to extend my gratitude to all the employees with whom the Ombudsperson Office interacted 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.

Ian Darling,
January, 2013

OMBUDSPERSON OPERATIONS

How the Ombudsperson Office works

The Ombudsperson receives complaints from homeowners, but works with many different stakeholders – homeowners, Tarion employees, and builders in resolving complaints. In doing so, we pledge to treat all who deal with our office with dignity and respect. We treat people fairly by:

- **listening to all sides of the story,**
- **ensuring we understand the perspectives of the people we serve,**
- **considering all the evidence available, and**
- **giving reasons for our decisions.**

When the Ombudsperson Office receives a complaint, we seek to understand the concerns and obtain permission to look into the complaint. We then look to see what has been done to resolve the problem and provide advice and guidance to assist homeowners in resolving their concerns. If we are the first people that the homeowners have contacted, we will discuss their concerns and provide advice, or refer complainants to the appropriate person within Tarion. If the complaint is outside the jurisdiction of the Office, we will provide information to assist in resolving the concerns.

When Tarion has attempted to resolve a complaint, the Ombudsperson Office will examine the complaint to review if the homeowner has been treated fairly. The Office will try to resolve the case informally through a variety of conflict resolution techniques. In some cases, the Ombudsperson may choose to investigate the complaint and issue a recommendation that ensures a fair resolution.

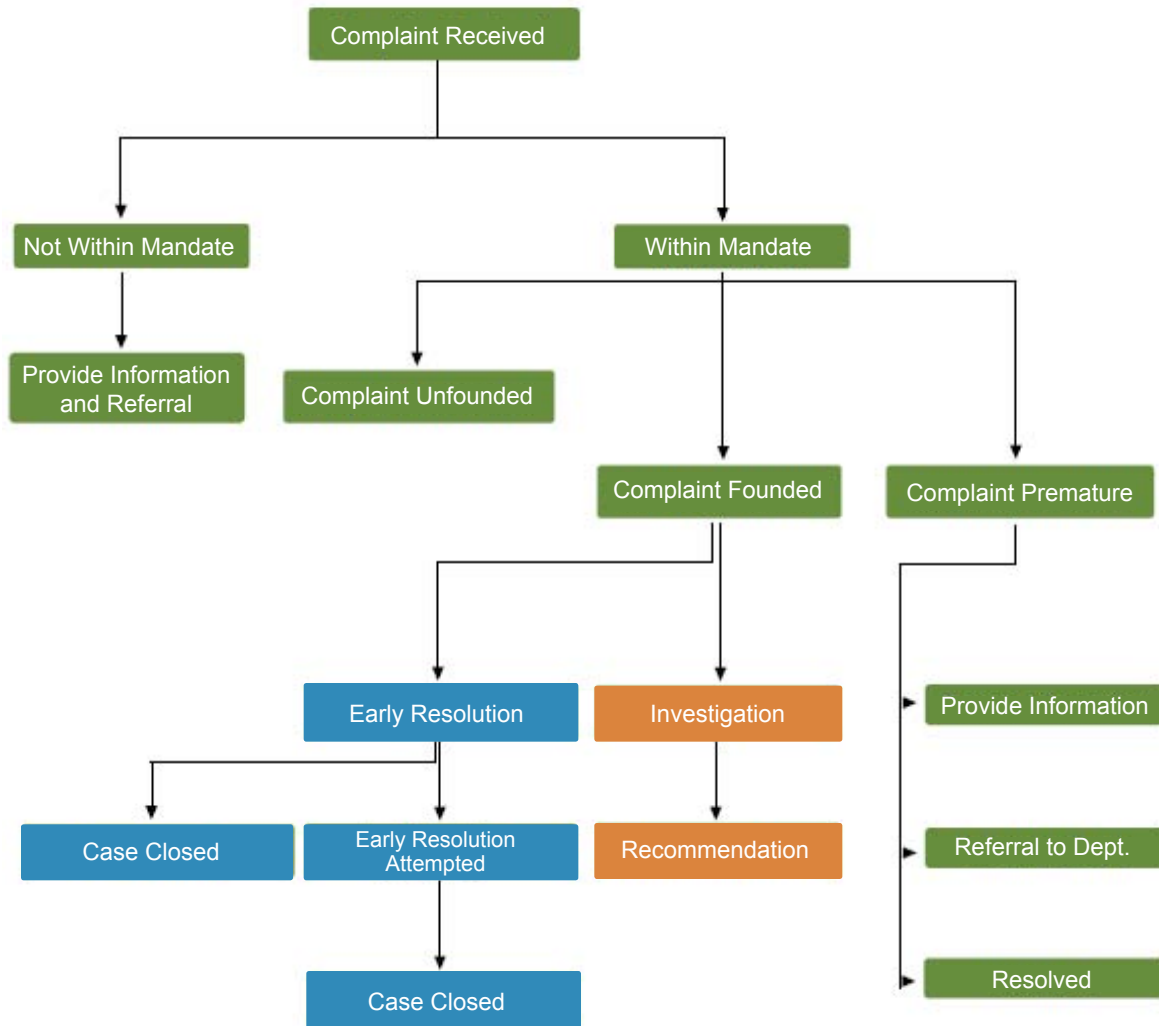
The Ombudsperson Office strives to be responsive and timely in its work. The Office has established service benchmarks. We aim to respond to initial homeowner inquiries within 24 hours. Case reviews are completed within five working days of when we receive the homeowner's permission to access the

case. Early resolution and investigation can take longer to complete, depending on the circumstances. We strive to complete early resolution within two weeks of receipt of the complaint. Investigation can take up to 90 days, depending on the circumstances of the case, during which time the Office makes it a priority to keep complainants apprised of the status of their complaints.

There are limits to the mandate of the Ombudsperson Office. The Office does not deal with complaints outside of the warranty plan (the *Ontario New Home Warranties Plan Act*), concerns about employee impropriety, or privacy concerns. For more information on the mandate for the Ombudsperson, please refer to www.tarion.com.

When the Ombudsperson finds that a complaint has been substantiated, the Office works with Tarion to determine a fair solution. In some cases, we make a recommendation about the dispute, or systemic issues that affect more than one home. The Ombudsperson attempts to ensure the remedy addresses the problem.

OUR PROCESS

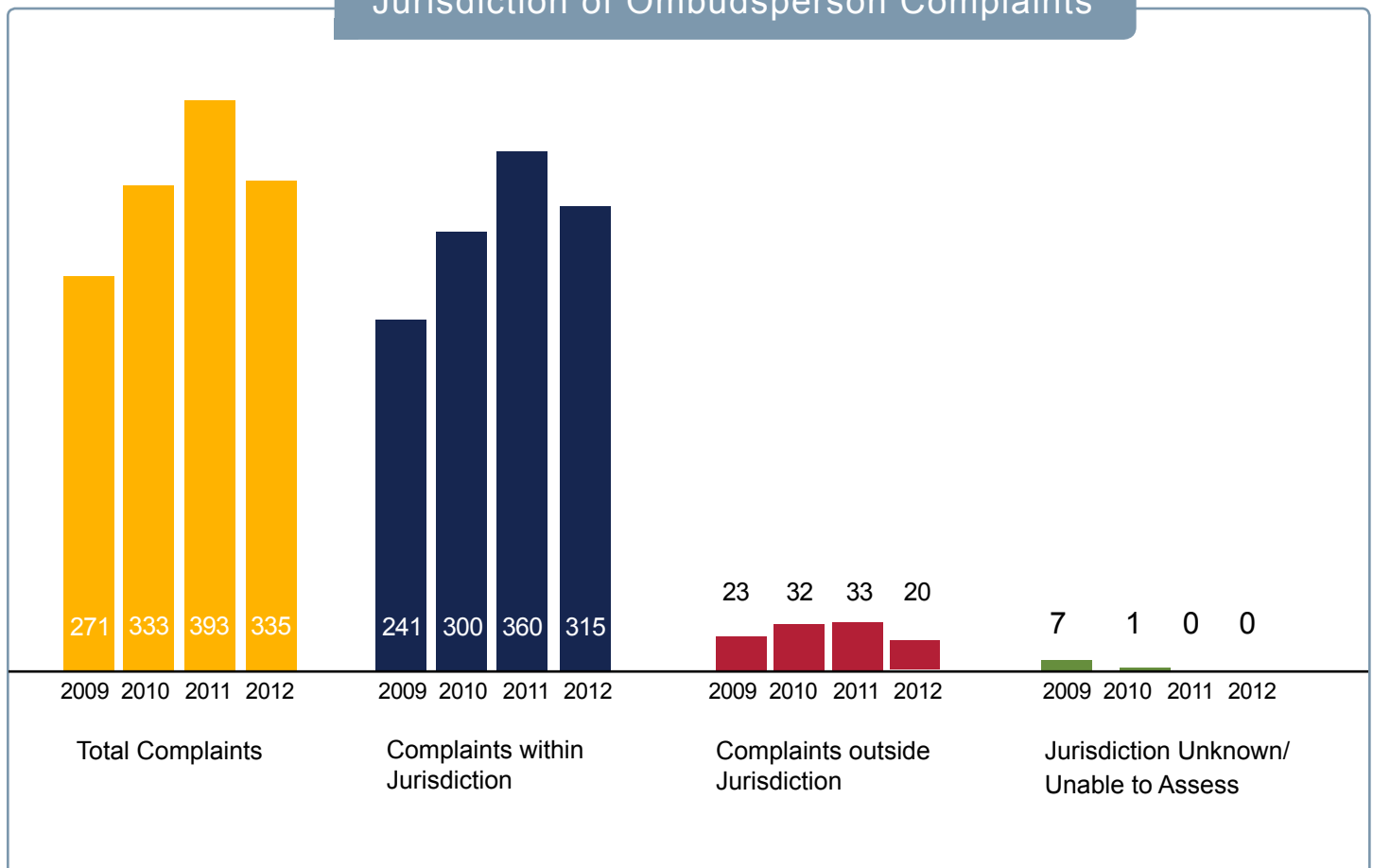


STATISTICS

The Ombudsperson Office received 335 complaints and inquiries in 2012. This is a decrease from 2011, but on par with 2010. The second half of 2011 and the first quarter of 2012 was the busiest sustained period since the Office was created (with complaint and inquiry volumes at record levels). In the 2011 Annual Report, we commented that we were unsure if this represents a natural growth due to heightened awareness of the office or if it was a reflection of industry conditions. We saw the volume of complaints revert to their usual levels in the second quarter of 2012.

Of the 335 complaints, 315 fell within the jurisdiction of the Office (as outlined in the Terms of Reference which can be found on www.tarion.com). The number of complaints that were outside the jurisdiction of the Ombudsperson Office was the lowest since the establishment of the Office. The majority of the non-mandate complaints were related to Tarion, but were excluded from our mandate. Complaints from builders are an example of a non-mandate complaint.

Jurisdiction of Ombudsperson Complaints



Type of Complaint

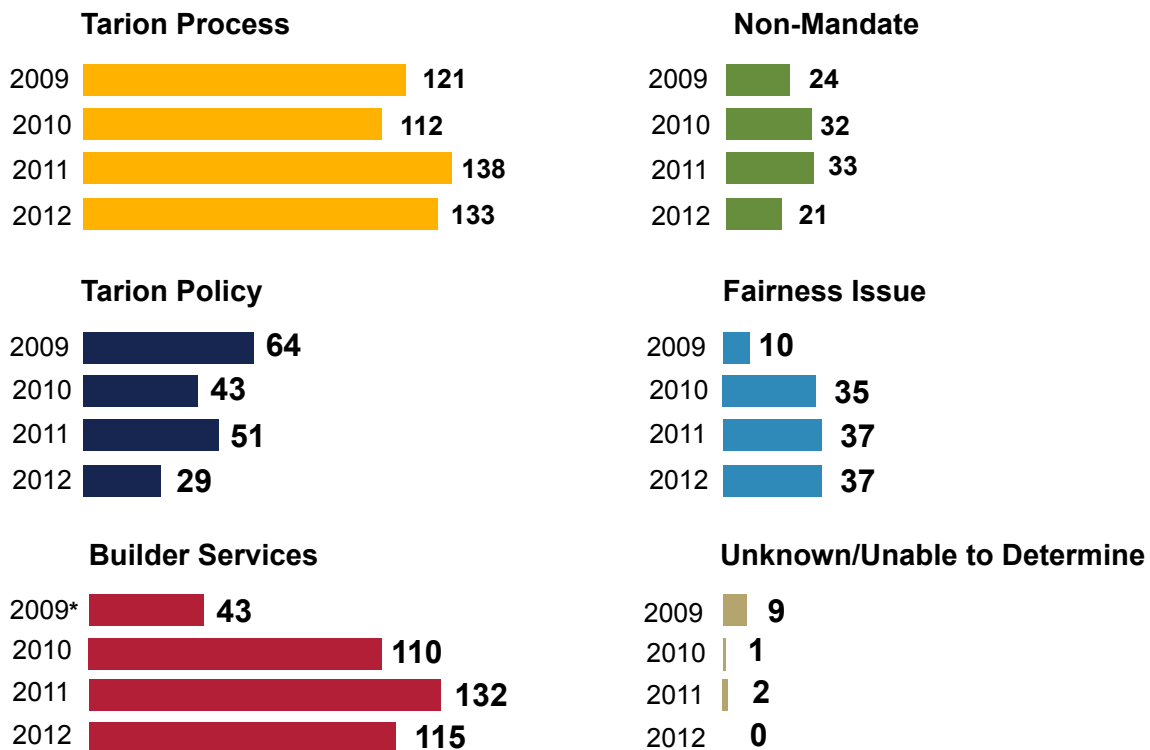
When the Ombudsperson Office receives a request for information, inquiry or complaint, we assess the concern and track the issue(s) presented. Complaints about Tarion processes and builder services continue to be the most common types of complaints. Builder services refers to complaints about the service provided by builders to homeowners. These complaints, which had the highest growth in 2011, are not directly related to Tarion but are important to track because Tarion has a role in ensuring that builders meet their obligations under the warranty and educating builders regarding effective service.

Tarion process and builder service related complaints and inquiries tend to be resolved in the intake phase

of the Ombudsperson process. In many cases, the Office helps complainants to understand the warranty process, explains how to manage their warranty complaints, and makes referrals to appropriate Tarion staff. These cases tend to have fewer interactions and are closed with one or two contacts. This demonstrates the importance of the informal role the Office plays in preventing problems from escalating.

Complaints related to fairness issues remain the most complex, and take the longest to resolve. We consider the basis of a complaint to be a fairness issue in cases where it includes (but is not limited to) aspects of procedural fairness, the substance of decision-making, or where interpersonal issues undermine fairness.

Types of Complaints Received by Ombudsperson



* The Ombudsperson Office started tracking Builder Services complaint issues as a separate category in July 2009.

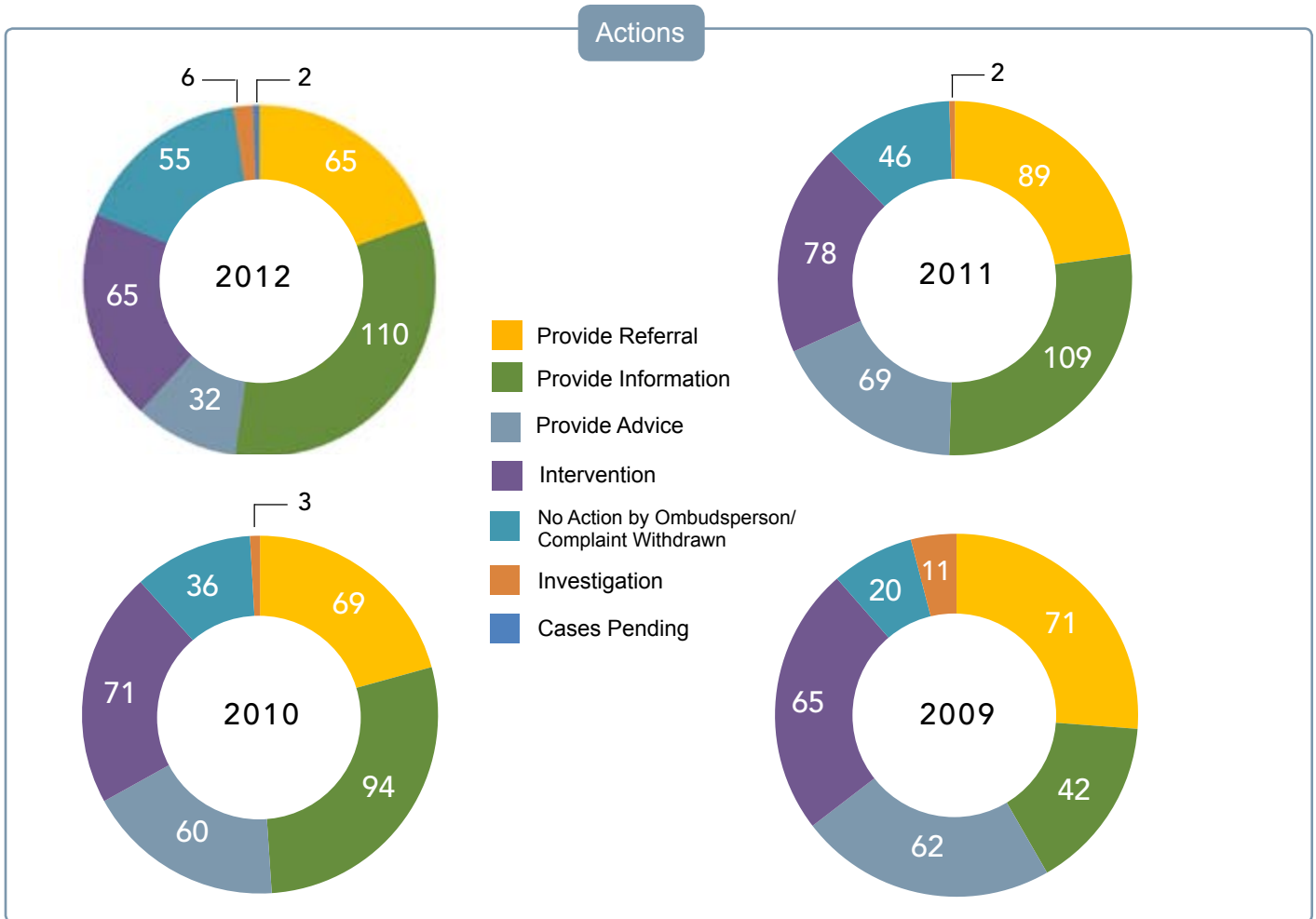
Action & Resolution

Action refers to how the Ombudsperson dealt with the complaint. The four charts below show the important role the Ombudsperson Office plays in informally resolving complaints. It demonstrates how the Ombudsperson works to resolve concerns informally by providing information, referral and advice. The Ombudsperson is designed to be an office of last resort. This means that complainants need to address their concerns to the relevant department before we will investigate a complaint. Most cases where we provide advice and referral are premature, because the complainant has not addressed their concerns to the appropriate Tarion department. In these cases, staff in the Ombudsperson Office advise complainants how to effectively complain to Tarion. It is our experience that in most of these

cases, homeowners are able to resolve their complaints and inquiries with only one contact with the Ombudsperson Office.

Intervention refers to cases where the 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. We continue to focus our interventions toward early resolution as we have found it more effective to focus on conflict prevention through early resolution than investigating what went wrong after the fact.

Investigation remains an important function of the Ombudsperson office and is used when problems cannot be resolved informally, where there are disputes over the facts of the case or where the problem may have systemic implications.



The table below shows how the complaints and inquiries were resolved, and how this relates to the Ombudsperson complaint process. The phases of the Ombudsperson process are intake, early resolution and investigation. Cases that were closed during the intake phase were inquiries and requests for information where the issue was premature or fell outside the mandate of the office. Issues are determined to be premature when complainants have not yet attempted to resolve their complaints with the relevant Tarion department. In these cases we provide information and referral to appropriate resources.

Early resolution involves advice and intervention by the Ombudsperson Office. In these cases we provide

advice to complainants on how to resolve their concerns. We also attempt to resolve complaints through conflict resolution and negotiation. In some cases we conduct reviews to establish if a complaint is founded and may make recommendations. Investigation refers to a full and formal review of the file and interviews with relevant parties and draws conclusions based on the available evidence. Investigations may result in formal recommendations. The Ombudsperson Office also has the authority to start "own motion investigations." In these cases the Ombudsperson can choose to investigate an issue without an individual complainant.

Phase	Resolution	# of Cases			
		2009	2010	2011	2012
Intake	Referral - Premature	57	51	78	56
	Abandoned by Complainant	29	34	43	55
	Referral/Information - Complaint out of jurisdiction	18	25	23	17
	Information - Premature	14	67	82	86
	Referral/Information Complaint Unfounded	5	17	15	16
	Ombudsperson Office Withdrew	5	2	2	0
	Under Appeal	0	0	0	1
	In Litigation	0	1	2	2
Early Resolution	Advice to Complainant	47	48	65	28
	Review - Unfounded	35	29	13	19
	Facilitated Solution	22	16	23	17
	Review and Recommendation	20	16	13	13
	Early Resolution	5	24	32	17
	Compromised Solution	3	0	0	0
Investigation	Investigation - Unfounded	6	0	2	2
	Investigation and Recommendation	5	3	0	5
Pending	Cases with outcome pending	0	0	0	2
	Total	271	333	393	335

CASE STUDIES

This report also includes case stories, which show how the Ombudsperson works, and provides an opportunity to learn from complaints. These stories are based on actual complaints that the Ombudsperson Office received. We have changed some of the details to protect the confidentiality of the people involved.

Case Study 1

Mr. O., the owner of a condominium unit, experienced problems with ongoing water penetration in the bedroom. Although the problem had been reported to the property manager and included on the 2nd year performance audit for common element issues the issue remained unresolved. The damage from the water penetration was getting worse and Mr. O. believed his unit was uninhabitable. Mr. O. had contacted the property manager and reported the issue, but was not happy with the response. The property manager submitted a request for conciliation to Tarion including a report from the corporation's engineer. The property manager was advised by Tarion that a conciliation could not be conducted until the builder had an opportunity to resolve the water penetration issue.

Mr. O. contacted Tarion to ask how the issue could be resolved. Tarion was aware of several problems in the building, but could not speak about the common element issues because the board of directors of the condominium corporation are the owners of the issue. The property manager and Mr. O. contacted the Office to determine what steps to take in order to have the water penetration issue resolved to mitigate any further damage to the homeowner's unit. We determined that there were no outstanding fairness issues, but identified confusion over whether the issues were problems within the unit, or were related to the common element defects. This confusion was preventing the problem from being resolved.

In reviewing the case, we determined that there was confusion over the roles and responsibilities with respect to the warranty process when the common element concerns have an impact within the unit. This is the most common complaint issue we receive

related to condominiums. The Ombudsperson reviewed the situation with Tarion's common elements staff and it was determined that a site meeting conducted by a Tarion Field Claim Representative would be appropriate. The meeting would be an opportunity for Tarion to educate the property manager and homeowner about the warranty process, and to have the builder address the outstanding defects. The Field Claim Representative met with the property manager to discuss the common element warranty process, and with the homeowner to review and inspect the water penetration concern. The Field Claim Representative discussed the concern with the builder and repairs began the following week.



Case Study 2

Mrs. Y. contacted the Office to voice concerns about her Year-End case and the conciliation inspection process. During her 30-Day case, the FCR determined that some items were not warranted. The FCR suggested that if the homeowner could provide new evidence to substantiate her claims, she could re-list some items on her Year-End Form, instead of re-requesting a decision letter and appealing the decision to the Licence Appeal tribunal. In the time between her 30-Day and Year-End Form, the homeowner paid for a home inspection report and relisted several items on her Year-End Form, believing she had done what she had been asked.

A different Field Claim Representative was assigned to the Year-End case, and they noticed that some of the items were repeated from the 30-Day Form and warranty assessment. The FCR contacted Mrs. Y. and advised that Tarion would not review those items and she would have to request a decision letter from the FCR who conducted her original inspection. Mrs. Y. was told the new inspection would only focus on issues that were unique to the Year-End Form. Mrs. Y. then called our Office as she felt she was being treated unfairly.

We identified several fairness issues with Mrs. Y.'s case. Mrs. Y. had done what was asked by providing new evidence to support her claim and re-listing the disputed items on her Year-End Form. For Tarion to then state that those items would not be inspected, regardless of what evidence she might possess was unfair. We were concerned that Tarion was closing the case without considering new information which might substantiate the claims. The Ombudsperson determined that it was unfair to reject the new information out of hand, and concluded that Tarion's position was arbitrary and unfair.

We contacted the Field Claims Manager (FCM) who advised us that they had consulted with their peers on the issue, and that they had all determined that the decision was correct. Our Office felt this was unreasonable, wrong and unfair, and escalated this case to senior management at Tarion. This escalation resulted in a department consultation for Tarion field staff and managers, which resulted in clarification of the

proper process and procedure for circumstances such as this. Following our discussions, Tarion agreed that homeowners are able to re-submit items on a Year-End Form if they wish, and that new evidence should not be dismissed without proper consideration.

Mrs. Y. was granted her inspection, which included all of the items from her form that she wished to be inspected, as well as consideration of her home inspection report.

Case Study 3

Mr. G. had filed an appeal with the Licence Appeal Tribunal after Tarion determined that he was late in submitting a warranty claim. During a pre-hearing, Mr. G. and Tarion settled the appeal by agreeing that Tarion would re-inspect specific items from the warranty form. The parties signed an agreement stating that Tarion would inspect the items and treat them as if they were received on time.

Mr. G. called our Office two months after the agreement was made because he had not heard from anyone at Tarion to schedule his inspection appointment. Our Office followed up with the appropriate Tarion staff and the inspection was scheduled.

We then received another call shortly after the inspection appointment. An FCR had contacted the homeowner and stated that he would not warrant the items because they were submitted to Tarion after the warranty period expired. This was the opposite of the intent of the pre-hearing settlement. Mr. G. was very upset that the FCR did not have an understanding of what was to be inspected and felt that Tarion had not honoured the agreement.

Our Office contacted the Warranty Services department and discussed the intent of the settlement. The FCR was unfamiliar with the agreement that the items would be inspected; and further that it appeared that there were differing opinions across different Tarion departments as to what Tarion had committed to in the pre-hearing settlement. The Ombudsperson recommended that the items be inspected as if they were



submitted on time. Tarion inspected the items and determined that the defect was warranted.

Case Study 4

The Ombudsperson received a complaint from homeowners regarding delays. The homeowners were in their new home for less than two years when a pipe burst and flooded their kitchen and main floor. They called their builder and Tarion, but both offices were closed for a holiday long weekend. They then contacted their private insurance company for advice. They were advised that because the issue happened within two years of possession of their new home, they should have the issue and damages repaired and then submit their costs for reimbursement to Tarion. They did so and properly documented the damages and emergency repairs for Tarion's records.

Mrs. Q. called Tarion the following work day. She was asked to send in her documents and receipts, and did so via email. The homeowners then called and spoke to a Tarion employee, who advised them to submit their issues on a Second-Year Form; they immediately followed this direction. At no point was an emergency case set up, nor were their documents reviewed under that process.

Two months passed with no word from Tarion. The builder repaired the damage that was not fixed during the emergency repairs, but did not reimburse the cost to repair the initial damage and leak. The homeowners called Tarion for an update, and were told there was no record of their Second-Year Form on file and that they needed to submit the form as well as all of their documents and expenses again. The homeowners submitted the form and supporting documentation again. They were told that the builder would be given the full 120 day repair period that follows submission of their Second-Year Form. Not knowing what else to do, they followed these instructions and did what was asked of them.

120 days passed and the builder advised Mr. and Mrs. Q. that they would not reimburse their costs incurred during the emergency repairs. The homeowners

called Tarion and were told they had to request a conciliation inspection and pay the \$250 fee to have their concerns assessed. Bewildered by this but not knowing what else to do, they requested the inspection and their file was assigned to a Field Claim Representative.

The FCR reviewed the file, then called the homeowners and advised that he had spoken with their builder, who claimed that the homeowners had poured a highly toxic and corrosive liquid down the drain, causing the pipe to burst and leak. The FCR then advised the homeowner that because they had "started an insurance claim" with their private home insurance, it would be an insurance matter and Tarion would not warrant their claim, reimburse them for their costs or require their builder to do so.



The homeowners contacted the Ombudsperson Office. We identified concerns with customer service, communication and the handling of their warranty concerns and claim. We determined that the homeowners had acted in good faith and followed the instructions they were given and had acted reasonably in having emergency repairs completed over the long weekend in order to mitigate their damages. We identified several problems with the case, specifically that:

- An unreasonable amount of time had passed (six months) from their first contact with Tarion, wherein they had not been provided with any answers about their concerns.

- It was unfair that Tarion, after acknowledging receipt of their documents in August, took no further action on the issues. Tarion did not follow its own emergency case protocol - no emergency case was ever created, no follow up was ever completed and no action was taken for two months until the homeowners contacted Tarion for a follow up.
- It was unfair and unnecessary to require the homeowners to re-submit their documents under the normal warranty process and then require them to request an inspection four months later on items that had clearly already been resolved.
- It was unfair for Tarion to speak to the builder and make a determination based only on his evidence, as to whether the claim would be covered without also speaking to the homeowners.
- The homeowners told Tarion many times that they had called their private insurance only for advice, but nonetheless were told their claim was denied because they had filed an actual insurance claim.

We recommended that a) the homeowners' costs be reimbursed without delay and b) Tarion apologize to the homeowners for their poor communication, customer service and handling of their file. Tarion accepted the recommendations and the homeowners received reimbursement for their costs incurred and an apology. They advised our Office they were very pleased with the results and thankful for our intervention.



Case Study 5

Our office received a letter from a homeowner who was upset that her Year-End Form was considered late and not accepted by Tarion. The homeowner indicated that she faxed the form on time and had the fax confirmation which showed the date, time and number of pages that were sent to Tarion. After not hearing from Tarion, the homeowner re-sent the form along with the fax confirmation and a letter explaining that she was re-sending by mail as she did not receive confirmation that Tarion received her fax. Tarion rejected her mailed form as being submitted too late and a notice was sent to the homeowner.

The homeowner then contacted our office and provided us with the Year-End Form and fax confirmation. Upon review of the Tarion case, it was noticed that her Year-End Form was in an electronic record of unprocessed documents. It was noted that the form which was originally faxed was not processed due to an error in the address on the form and had been sitting in the queue. We requested that Warranty Services review the unprocessed document and the fax confirmation sent by the homeowner.

Tarion accepted the originally faxed Year-End Form and provided the homeowner with an acceptance letter. Tarion agreed to keep the builder repair period according to the originally faxed form.

Case Study 6

Mr D. contacted the Ombudsperson to complain that his warranty assessment was unfair. Mr. D. reported problems with his brick-work on his 30-Day Form. The work to complete the repair would have been extensive, so the homeowner and the builder came to an agreement that instead of repairing the items on the list, the builder would build a fence and a deck and also finish the basement. Some of the work was completed prior to the end of the first year warranty, but the homeowner was not satisfied with its quality. The homeowner submitted a Year-End Form which restated the original defects,

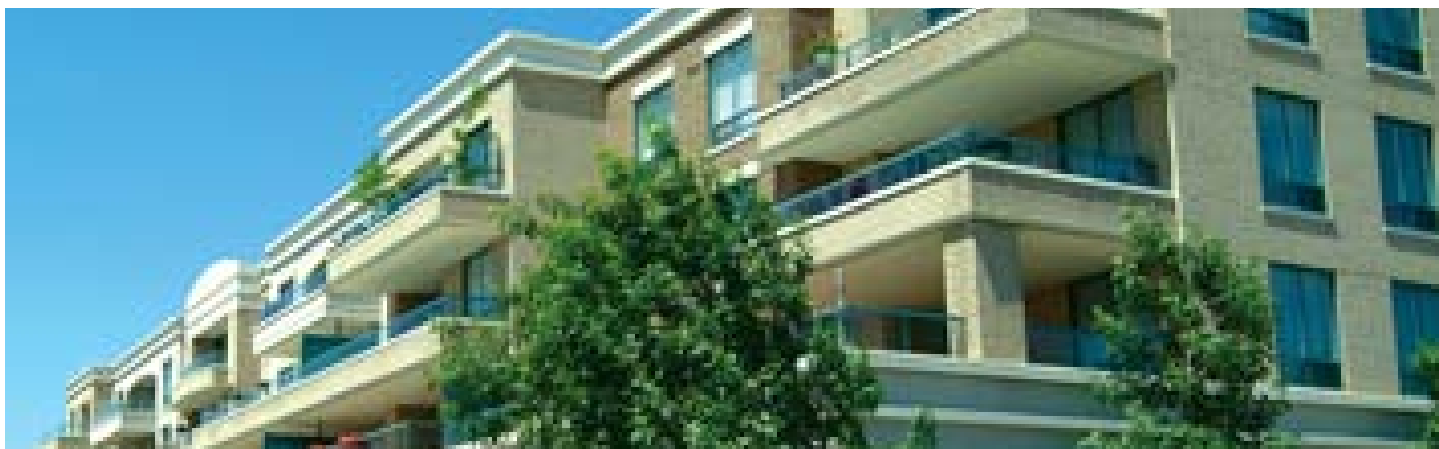
and listed the problems with the new items. Mr D. requested a conciliation inspection on the original defect and wanted Tarion to review whether the construction on the additional items was workmanlike.

Following the conciliation, Tarion determined that the defect in the brick work was not warranted because the homeowner had come to agreement on compensation, and that the compensation would have been worth more than the value of the warranted defect. Tarion did not make a finding related to the reported defects in the construction of the fence, deck or basement.

The Ombudsperson reviewed the issues. We found that Tarion was correct in determining that the fence, deck and basement should not be assessed, because they were not part of the original construction of the home and therefore outside of the warranty for the home. We did, however, find error in the decision related to the brick work. The warranty assessment denied the claim without assessing the condition of the reported defects in the brick. We determined that the warranty assessment should have considered the state of the brick, and whether there were warranted defects. The value of the work completed would only become relevant when assessing if the homeowner was entitled to receive payment to repair the problem. The value of the work would then be relevant because Tarion would need to assess if Mr. D. had received a benefit from the builder.

We also looked at the process used to assess the value of the additional work. Tarion's assessment of value was based on an internal estimate of the work completed, and by asking the builder for the value of the work. We determined that this was not fair because Mr D. was not given a chance to provide information. We also recommended that if Tarion was going to consider the value of the work completed, that Mr. D. should have a chance to provide any information relevant to the decision.

Tarion agreed to the recommendation and arranged for a re-inspection to provide a full assessment of the reported defects in the brick work, and agreed that the homeowner would be able to provide information if it was necessary to assess the value of the work in place.



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 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.

During 2012, the Ombudsperson Office made a variety of case specific recommendations. Some examples include:

- On three occasions, the Ombudsperson Office recommended that Tarion apologize for poor service that resulted in unfair treatment.
- In five cases, the Ombudsperson recommended that Tarion reconsider changing an action or decision.
- In three cases, the Ombudsperson found that Tarion had not provided reasons to support their decisions and recommended that Tarion provide reasons for their decisions. We also had individual cases where as a result of our intervention we recommended that Tarion improve communication, improve a policy or practice and improve service.

In cases where the Ombudsperson makes case specific recommendations, we work with Tarion to ensure that Tarion understands and agrees to implement the recommendations. After we make the recommendation, we monitor implementation. We are pleased to report that Tarion implemented all of our case specific recommendations in 2012.

Systemic recommendations:

The Ombudsperson Office is in regular communication with Tarion regarding the implementation of our recommendations. During 2012 we continued to work with management to improve the process whereby Tarion provides updates to the Consumer Committee of the Board of Directors regarding progress made in response to the recommendations.

During 2012 Tarion met the commitments made to address recommendations made in the 2011 Annual Report, and addressed outstanding commitments from 2010.

2012 Annual Report Systemic Recommendations

The recommendations contained in this year's annual report are directed toward enhancing the capacity of Tarion's complaint and review processes. Tarion has a process to deal with complaints and requests for reviews of warranty decisions. The Ombudsperson recommendations are directed toward increasing the effectiveness of the process by which Tarion receives and responds to complaints about service and requests for warranty review.

The generally accepted criteria for a credible complaint process include:

- Accessibility – recognizable and easy to access
- Simplicity – a straightforward process
- Speed – acting within a reasonable and predictable timeframe
- Respect and Discretion – issues dealt with respectfully and in confidence where appropriate
- Procedural equality – each concern is assessed on its own merit
- Motivation - genuine interest in rectifying errors and addressing complaints
- Follow-up on conclusions – to ensure any changes are implemented
- Systemic concern – awareness of potential for systemic concerns¹

It is our observation that it is not always clear to homeowners how to access the warranty review or complaint process. Additionally, the first level of review or complaint is often perfunctory and therefore does not meet the standards for credible review. The following recommendations are geared toward developing the capacity to resolve complaints and making the existing processes explicit.

1. The list of criteria is adapted from "A Legitimate, Credible Complaints Office." Quebec Ombudsman, 2001.

Recommendation:

To enhance the existing complaint and appeal mechanisms by developing the capacity of the processes to ensure the processes meet the credibility criteria by:

- 1. Articulating an accessible, consistent process for handling requests for review of warranty decisions. There should be a clear and consistent process for builders and homeowners.**
- 2. Articulating a consistent process for handling complaints regarding Tarion service or policies.**
- 3. Developing capacity to handle complaints and requests for reviews of warranty decisions including training and support for management so reviews are credible.**

In the 2009 Annual Report, we made recommendations about builder honesty and integrity. Tarion created a process with appropriate due process protections to ensure that those who were complained about were treated fairly. We believe that these steps were an appropriate response to the report, but would like to see further clarity regarding what constitutes honesty and integrity issues, as well as a clear process to deal with cases where builders have been found to be lacking integrity.

The Ombudsperson office continues to hear complaints from homeowners regarding builder honesty and integrity. The Ontario New Home Warranties Plan Act indicates that Tarion shall consider a builder's technical ability, financial resources and whether they conduct their business with honesty and integrity when determining if an applicant should be licenced to build new homes in Ontario. It is our experience that what constitutes "honesty and integrity" is not as clearly defined, nor is Tarion's ability to consider these aspects.

Under the current process, Tarion does not have a clear and consistent process for homeowners (or the general public) to submit concerns about how

builders are doing their work. This means that people who want to complain have to rely on Tarion staff to identify a possible issue and document the concerns. Builder compliance with the Tarion customer service standard and the capacity of the builder to build homes that meet the warranty standard are incorporated into Tarion's licencing and underwriting processes. We feel that the process should be enhanced with clear and consistent sanctions for builders who have been found to have violated the honesty and integrity provisions. It is our contention that Tarion should enhance the capacity to deal with complaints about how builders conduct their business, so that valuable information about builder honesty and integrity is available when evaluating builders and associated risks.

The Ombudsperson recommends that:

- 1. Tarion revisit the current approach used to evaluate and monitor builder honesty and integrity, and its connection to builder registration.**
- 2. Tarion enhance the capacity of the existing builder honesty and integrity complaint process by:**
 - Reviewing the builder honesty and integrity complaint process such that it meets the standards for a credible complaint process.**
 - Allowing consumers to submit complaints about builder honesty and integrity directly to Tarion.**
 - Developing consistent internal record keeping so that appropriate staff are aware if a builder's conduct raises a concern.**
 - Conducting ongoing training so that staff is aware of the investigation process and criteria for an honesty and integrity complaint.**
 - Developing communications to stakeholders about how the honesty and integrity complaint process functions.**

MANAGEMENT RESPONSE



To ensure stakeholder fairness, we are committed to addressing the specific recommendations made by the Ombudsperson in this report.

Part of the mandate of the Ombudsperson's Office includes identifying complaint trends and systemic issues, and recommending improvements. Tarion's management team is pleased to respond to the following recommendations made in the 2012 Ombudsperson Annual Report:

1. Opportunities for Improvement

The Ombudsperson identifies the following 5 opportunities for improvement:

- Improved decision-making;
- Understanding fairness;
- Reducing unnecessary delays;
- Improved internal communications about cases; and,
- Hearing from both sides of a dispute before making a decision.

Tarion will address these areas by providing ongoing customer service training in its core values of Fairness, Logic, Caring, Teamwork, and Listening. The goal of this training is to equip Tarion staff with more effective resources for conciliating disputes between new home buyers and new home builders and, in so doing, build on our 85 per cent customer satisfaction rating for 2012.

2. Enhancing the Complaints Process

The Ombudsperson has recommended that Tarion enhance its existing complaint mechanisms by articulating an accessible, consistent process for the handling of requests for review of warranty decisions. There should be a clear and consistent process for builders and homeowners.

The Office also recommends articulating a consistent process for handling complaints regarding Tarion service or policies and developing capacity to handle complaints and requests for reviews of warranty decisions. These include training and support for management to ensure reviews are credible.

Warranty Services will review its complaint management process in 2013 with a focus on:

- Collaborating with Stakeholder Relations to improve the Tarion web site to include a page that clearly explains the process for handling complaints about warranty decisions. The new page will be implemented before the end of Q2 2013; and,
- Providing internal training to Field Claim Managers on the importance of handling complaints with the appropriate attitude. This will be completed by the end of Q2 2013.

3. Revisiting Tarion's Approach to Builder Honesty and Integrity

The Ombudsperson has recommended that Tarion revisit the current approach used to evaluate and monitor builder honesty and integrity.

Tarion will:

- Consider the extent to which it is within its Objects to change its approach to builder honesty and integrity. A report containing a legal analysis of Tarion's position under the *Ontario New Home Warranties Plan Act* will be delivered to management for consideration by the end of Q2 2013; and,
- Develop ongoing training for staff affected by honesty and integrity issues by the end of Q2 2013. This includes updating materials to provide training to new hires and for use as refresher sessions.

Any additional responses to the Ombudsperson's specific recommendations will depend on the outcome of the legal analysis noted above.

Howard Bogach
President and CEO
Tarion Warranty Corporation