



Tarion Ombudsperson

2011 ANNUAL REPORT



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ANNUAL REPORT MESSAGE



The Ombudsperson encourages Tarion to remain diligent in its response to consumer complaints, especially with preventable issues.

The end of 2011 marked the completion of the third full-year of operation of the office of the New Home Buyer Ombudsperson. The New Home Buyer Ombudsperson receives, investigates and seeks to resolve complaints from homeowners regarding their interactions with Tarion. This report provides an update on the activities of the office as well as a summary of cases and recommendations. Within three years, many new initiatives have been implemented that have originated from homeowner feedback.

We continue to see significant progress in Tarion's responsiveness to homeowner complaints, and in its commitment to fairly administering the warranty process. Tarion has demonstrated fair treatment in its response to Ombudsperson recommendations and interventions on behalf of individual homeowners. In the three years since the Ombudsperson Office was established, we have seen significant improvements in employees' awareness of customer service and fair treatment. While we have seen improvements in service, we have also identified many complaints that are preventable. This report acknowledges Tarion's progress toward being fair and transparent in its dealings with homeowners and also seeks to identify areas where Tarion can improve its service.

During 2011 the caseload for the office continued to grow. We received the largest number of complaints and inquiries since it was established. In addition to investigating and resolving complaints, we also focused on continuous improvement by reviewing the terms of reference for the office and how we track and report on recommendations made by the office. We will continue these activities in 2012.

Proactive Feedback and Fairness Reviews

During 2011 the Ombudsperson Office increased focus on proactive feedback in its casework. Proactive feedback involves a strategic focus on resolving complaints through early resolution while looking to identify systemic issues, and making recommendations to remedy problems. This approach has helped to reduce the number of formal investigations while

maintaining the objectives of resolving complaints and promoting fairness. Through this proactive approach, we have secured fair resolutions for homeowners and identified systemic issues. We have also enhanced the process of how we make and follow-up on recommendations. The office meets regularly with Tarion management and uses these opportunities to comment on concerns and provide feedback. This process encourages informal recommendations and faster implementation of changes.

These initiatives allow the Ombudsperson Office to be efficient while meeting its mandate to address specific homeowner concerns and systemic issues. While investigation remains a vital tool for the Ombudsperson to determine if complainants were treated unfairly, to identify the root cause and recommend changes, a proactive approach helps prevent problems from occurring from the onset. This leads to effective complaint resolution.

The next phase in our effort to incorporate a preventative approach in our casework is to encourage Tarion employees to see the Ombudsperson Office as a resource. Although the Ombudsperson Office does not make decisions about an individual case or policy, we can provide an opinion on the fairness of a situation, proposed approach or policy before a change is implemented. The Ombudsperson office is available to consult with Tarion, and provide an opinion on the fairness of proposed approaches to solving problems, or policies. Through consultation with Tarion, the Ombudsperson Office can offer suggestions to enhance fairness and anticipate problems. The Ombudsperson

“A commitment to fairness extends beyond enacting policies. The day-to-day behaviour and decision-making must support the commitment to fair practices.”

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MESSAGE (continued)

Office encourages Tarion to consult with our office during the decision-making process, and to use the Ombudsperson fairness reviews as a key resource.

Recommendation Implementation and Feedback

In 2011 we focused on developing an effective way to monitor and report on the implementation of recommendations. During the three years in which the office has operated, we have made a variety of case specific and systemic recommendations. Tarion has responded to these recommendations by creating policies or changing processes. We have also seen an increased commitment to service. This includes a focus on caring, logical thinking, listening, showing teamwork and attention to fair treatment of its stakeholders.

Creating a new policy or practice is not sufficient to ensure that it is fully implemented. In some instances, we have seen behaviours reverting back to

“Tarion’s best interest is served by securing fair outcomes.”

prior habits and not taking our recommendations into action. One example of this relates to a recommendation contained in the 2009 Ombudsperson Annual Report regarding how Tarion receives and considers third party reports. Tarion implemented a process to improve the consistency of how these reports are received in order to address the concerns identified in the Ombudsperson recommendations. Unfortunately, we are seeing instances where Tarion employees are not following the new guidelines. For example, in November 2011 we received a complaint that Tarion did not acknowledge a report that a homeowner sent to support a Major Structural Defect Claim. This was not consistent with the process that was developed in response to the Ombudsperson recommendations.

It is clear that Tarion has improved and shown clear intention to continue to improve its practices, but it is also important to remember that a commitment to fairness extends beyond enacting policies. The day-to-day behaviour and decision-making must support the commitment to fair practices.

Areas of Concern

The Annual Report provides an opportunity to highlight areas of concern and emerging issues. In 2011 we identified concerns with poor inter-departmental communication and perceived bias in decision making. We encourage Tarion to examine and address these concerns.

Interdepartmental communication: In 2011 the Ombudsperson Office observed several cases where the root cause of a complaint was due to poor communication within Tarion. In some cases, different departments within Tarion worked at cross purposes while dealing with a complaint. Some examples include not consulting other departments prior to making decisions that affect them, making decisions without the appropriate authority, providing information without a full picture or understanding of the situation and poor communication across departments. These cases resulted in reduced quality of service to Tarion’s stakeholders (consumers, builders and the government), which places Tarion’s reputation at risk. I encourage Tarion to continue to work to address these issues, and to encourage effective inter-departmental communication.

Decision-making: When complaints come to the Ombudsperson Office, we often speak with Tarion employees to listen to their perspective on the situation. Tarion strives to be free from bias in its decision-making, and we find that in the great majority of situations the decisions are free from bias. However, we are concerned that some of the comments we receive may reflect bias in the decision-making process. Occasionally, we hear statements that speculate the homeowners’ motives or judgements that are not based in fact. This raises concerns about

ANNUAL REPORT MESSAGE (continued)

bias in decision-making. It may be appropriate when negotiating to understand the other party's interests, however, our concern is that the conduct goes beyond understanding interests and has a negative impact on the process of resolving valid warranty concerns.

If Tarion accepts that the warranty is intended to protect against defects in a new home, and the defects are valid, then Tarion should rely on objective criteria to establish the validity of the warranty claims and the value of the repair.

Tarion must balance the priorities of providing appropriate compensation to repair warranted defects with the responsibility of managing the warranty. Speculating as to the motives of the homeowners introduces the possibility of bias and influences how Tarion assesses the defect. We remind Tarion of the importance of maintaining a fair approach in establishing compensation, and that Tarion's best interest is served by securing fair outcomes.

This report raises a number of observations and comments about individual cases, and makes specific comment about interdepartmental communication, and decision-making. I have discussed these concerns with management. I am satisfied that management takes these concerns seriously, and incorporates the feedback from the Ombudsperson into staff development and business and operational planning. Tarion has advised that in 2012, Customer Service excellence training, under the rubric of the Tarion Way, will address, among other things, communication and decision-making.

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 gratitude to all the employees with whom 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.



Ian Darling,
January, 2012.

OMBUDSPERSON OPERATIONS

How the Ombudsperson Office Works

The Ombudsperson receives complaints from homeowners, but deals with many different stakeholders including homeowners, Tarion employees and builders. 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 assess the complaint to see if efforts have been made 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.

In cases where Tarion has attempted to resolve a complaint, the Ombudsperson Office will examine the complaint to review if the homeowner has been treated fairly. The Ombudsperson Office will look for opportunities 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.

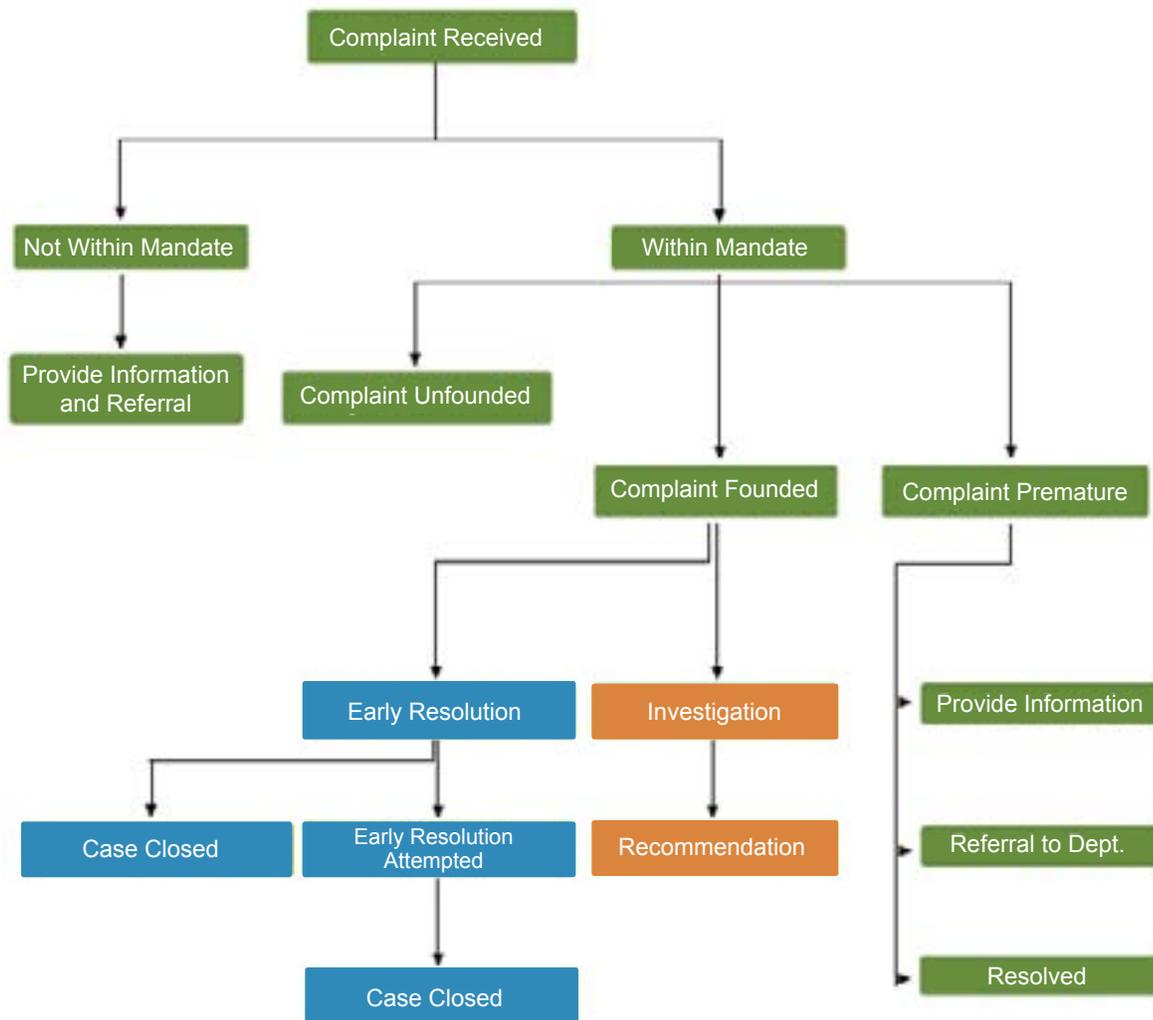
The Ombudsperson Office strives to be responsive and timely in its work and has established service benchmarks to help us achieve this goal. When homeowners initially contact us, we aim to respond

within 24 hours. Case reviews are to be completed within five working days of when we receive 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. The Ombudsperson 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, it is appropriate to make a recommendation. The recommendations may address the specific issues in dispute, or may address systemic issues that affect more than one home. The Ombudsperson attempts to ensure the remedy is proportional to the problem that is being addressed.

OUR PROCESS

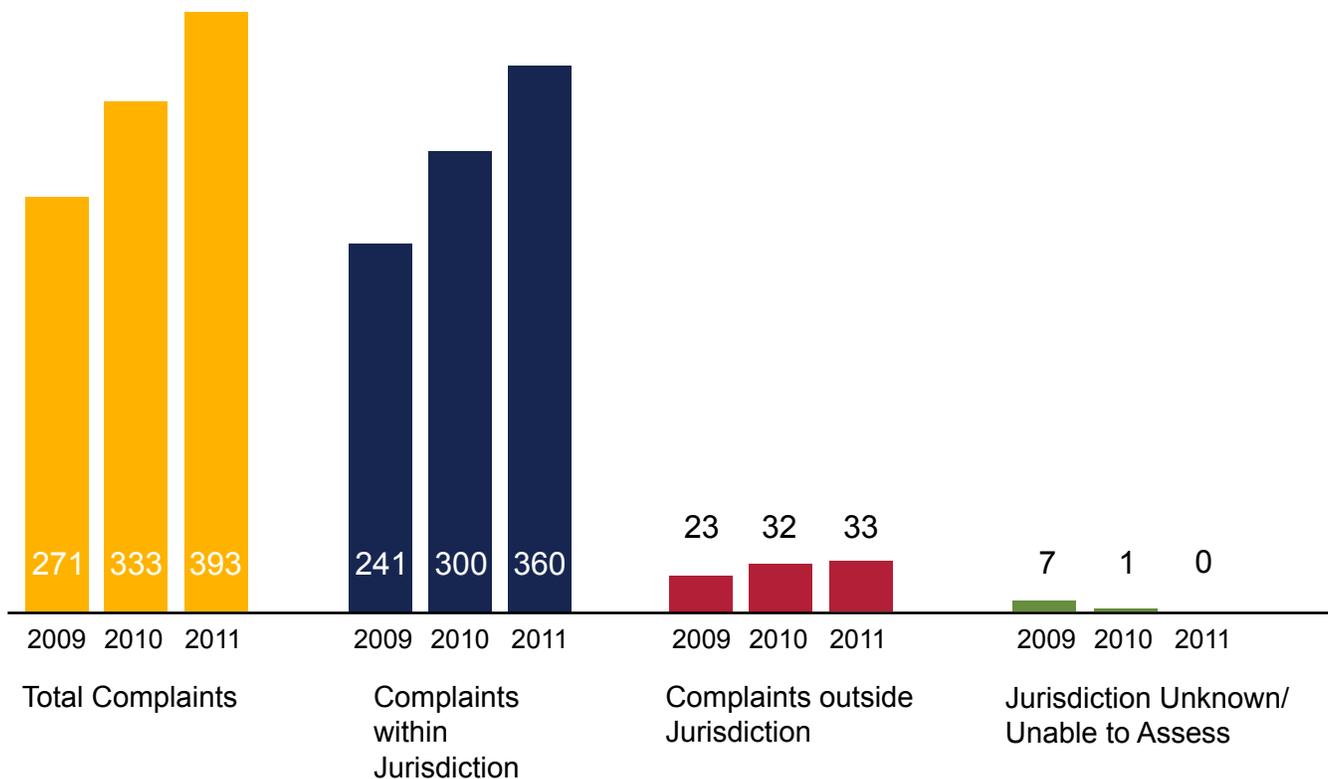


STATISTICS

The Ombudsperson Office received 393 complaints and inquiries in 2011. This is an increase from 2010 and 2009, as outlined on Table 1. The second half of 2011 was the busiest sustained period since the office was created (with complaint and inquiry volumes at record levels). We are unsure if this represents a natural growth due to heightened awareness of the office, or if it is a reflection of industry conditions. In July 2010, the HST was implemented on new home sales, and there was a rush to complete sales prior to the implementation. This has resulted in an increase of year-end warranty activity for Tarion in the second half of 2011. We will continue to monitor if the increase in complaints reflect a wider industry trend, or are related to Tarion's service.

Of the 393 complaints, 360 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 consistent with 2010. The majority of the non-mandate complaints were related to Tarion, but were excluded from our mandate (for example, complaints from builders).

2009-2011: Jurisdiction of Ombudsperson Complaints



Type of Complaint

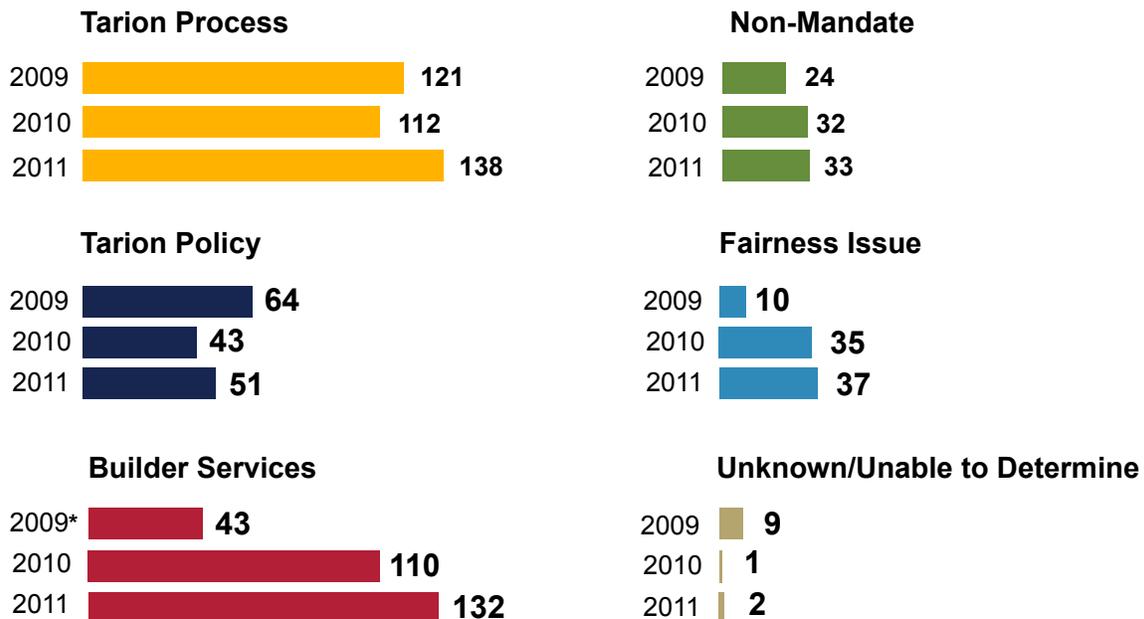
When the Ombudsperson Office receives a request for information, inquiry or complaint, we assess the concern, and track the issue(s) presented. Complaints about Tarion Process and Builder Services continue to be the most common types of complaints. Builder Services refers to complaints about the service provided by builders to homeowners. These complaints, which had the highest growth in 2011, are important to track. Tarion has a role in ensuring that builders meet their obligations under the warranty, and educates builders regarding effective service.

Tarion Process and Builder Service complaints and inquiries tend to be resolved in the intake phase of the Ombudsperson process. In many cases, the Ombud-

sperson Office helps complainants 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 regarding unfair treatment tend to be the most complex, and take the longest to resolve. We consider the basis of a complaint to be a fairness issue in cases where the issue includes (but is not limited to) aspects of procedural fairness, the substance of decision-making, or where interpersonal issues undermine fairness.

2009-2011: Types of Complaints Received by Ombudsperson

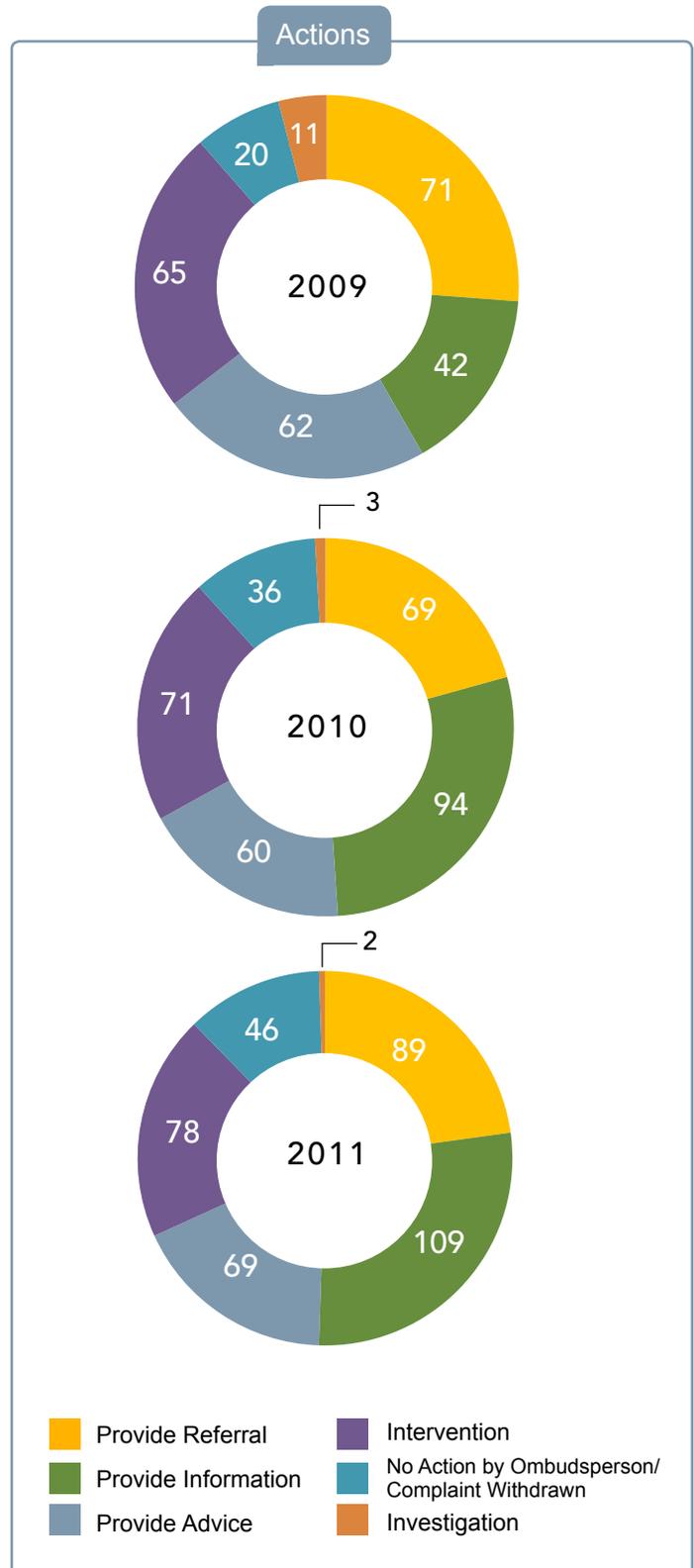


* The Ombudsperson Office started tracking Builder Services complaint issues as a separate category in July 2009.

Action & Resolution

Action refers to how the Ombudsperson dealt with the complaint. This table shows 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. During 2012 we saw an increase in the number of cases where staff in the Ombudsperson office provided advice and referral. 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, complainants are able to resolve their complaints with only one contact with the Ombudsperson office.

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. In 2011 the Ombudsperson conducted two formal investigations. The decrease in the number of investigations, when compared to previous years, is a result of more effective conflict prevention through early resolution.



The table below shows how the complaints and inquiries were resolved, and how it corresponds 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 of the mandate for the office. Issues are determined to be premature when complainants have not followed the process to address their concerns to Tarion. In these cases we provide information and referral to appropriate resources.

Early resolution involves advice and intervention on the part of Ombudsperson Office staff. 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, 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.

| ACTION | | # of Cases | | |
|-------------------------|--|------------|------|------|
| | | 2011 | 2010 | 2009 |
| Intake | Referral - Premature | 78 | 51 | 57 |
| | Abandoned by Complainant | 43 | 34 | 29 |
| | Referral/Information - Complaint out of jurisdiction | 23 | 25 | 18 |
| | Information - Premature | 82 | 67 | 14 |
| | Referral/Information Complaint Unfounded | 15 | 17 | 5 |
| | Ombudsperson Office Withdrew | 2 | 2 | 5 |
| | Under Appeal | 0 | 0 | 0 |
| | In Litigation | 2 | 1 | 0 |
| Early Resolution | Advice to Complainant | 65 | 48 | 47 |
| | Review - Unfounded | 13 | 29 | 35 |
| | Facilitated Solution | 23 | 16 | 22 |
| | Review and Recommendation | 13 | 16 | 20 |
| | Early Resolution | 32 | 24 | 5 |
| Investigation | Compromised Solution | 0 | 0 | 3 |
| | Investigation - Unfounded | 2 | 0 | 6 |
| | Investigation and Recommendation | 0 | 3 | 5 |
| | Total | 390 | 333 | 271 |

CASE STUDIES

The case studies in this report demonstrate how the Ombudsperson works, and provides an opportunity to learn from complaints. These examples are based on actual complaints that the Ombudsperson Office received. Some details have been altered to protect the confidentiality of the people involved.

Case Study 1: File Closed in Error

A homeowner contacted the Ombudsperson Office because she felt that Tarion had incorrectly closed her case, stating that the form was not submitted on time. The homeowner said she had faxed her Year-End Form to Tarion two weeks prior to the deadline. She provided the Ombudsperson Office with documentation to support her claim. Staff in the Ombudsperson Office reviewed Tarion's decision and the homeowner's file. During this process, staff in the Ombudsperson Office confirmed that there was an electronic copy of the homeowner's Year-End Form on file, but it had not been processed or acknowledged by Tarion. The date that the form was received by Tarion was consistent with the homeowner's account.

Action and resolution: The Ombudsperson staff brought this error to Tarion's attention, the form was accepted and the builder was given the full repair period.

Comment: This case study illustrates the important role that the Ombudsperson Office plays in identifying errors and resolving complaints in an early and efficient manner.

Case Study 2: No Responses

A homeowner contacted the Ombudsperson because he had not received a response to his communication with Tarion for eight months. The homeowner told us that Tarion had completed an inspection and provided a Warranty Assessment Report. The homeowner disagreed with the report and sent an email to the Field Claim Representative providing additional information in hopes of having the decision reversed. The home-

owner stated that he had not heard anything further.

Action and resolution: The Ombudsperson reviewed the claim file. The file was incomplete since it did not show any record of the communication between Tarion staff and the homeowner. We contacted the staff involved, and they confirmed that they had received the documents when the homeowner submitted them, but had not reviewed or responded to them. We recommended that Tarion review and respond to the information, and apologize for the delay. Following the resolution of this complaint, we also engaged in discussions with Tarion to ensure that important documentation and communication are on file and available for review.



Comment: Ensuring there is appropriate documentation in the case record continues to be a challenge for Tarion. Direct communication between homeowners and Field Claim staff helps to ensure good service, however we have received several complaints where homeowners provide copies of emails and communication that is not in the Tarion file. This makes it more difficult for the Ombudsperson Office to review complaints, and undermines the credibility of information provided by Tarion to homeowners and builders. More importantly, incomplete files complicate Tarion's case handling because other staff who are involved do not have all the relevant information in order to make proper informed decisions. This is particularly a problem when cases are reassigned to different Field

Claim staff. I encourage Tarion to continue to work on ensuring that all relevant information on the activity of the home is on file.

Case Study 3: Understanding the Question

A homeowner called the Ombudsperson Office because the Claim Service Representative (CSR) refused to provide information about a refund on the conciliation fee. The homeowner stated that she had sent several emails to Tarion asking for information about the fee refund, but had not received a response. A review of the file indicated that the homeowner was entitled to receive a refund because items were warranted at the conciliation.

Action and resolution: We spoke to the CSR who confirmed that the emails were received. She said that she misunderstood the question from the homeowner, thinking the request was about the settlement of the claim rather than the fee refund. We found out when the refund would be returned, and provided the information to the homeowner.

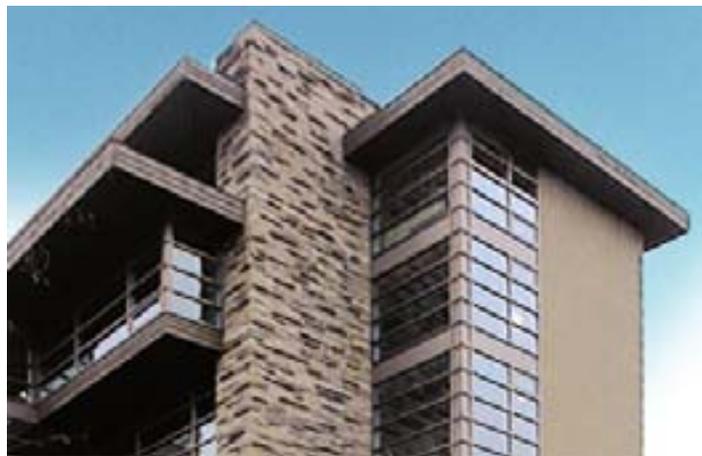
Comment: This complaint could have easily been prevented by the CSR taking time to understand what information the homeowner was requesting. Our office was also concerned that Tarion had not responded to the homeowner's questions. Much of the work of the Ombudsperson Office stems from preventable miscommunications. This case is an example of a complaint that could have been prevented by listening more intently to the homeowner and asking for clarification.

Case Study 4: Fairness Denied – Right to Appeal

A homeowner contacted the Ombudsperson Office to complain about the Warranty Assessment Report (the Report), and the inflexibility of the Field Claim Representative (FCR). The homeowner stated that he disagreed with several of the decisions not to warrant reported defects. The homeowner reported that he

had approached the FCR to dispute the findings, but the FCR would not change the decision. We asked if the homeowner had approached anyone else. He said that he had asked how to dispute the findings, but was not informed how to dispute the Report.

Action and resolution: The Ombudsperson Office reviewed the file and determined that the homeowner had communicated his dissatisfaction with the Report. There was no evidence that Tarion had responded or that the homeowner had been given information about how he could dispute the Report. This was unfair. The Ombudsperson Office explained the process to appeal a Tarion decision. We also requested to have a Field Claim Manager review the concerns with the assessment, respond to the concerns and if they were unable to resolve the concerns, provide the homeowner with the option to receive a decision letter so that the homeowner would have the option to appeal to the License Appeal Tribunal.



Comment: In this case the process to assess the defect was fair, but that fairness was undermined by denying the homeowner information about how to contest the decision. Fair treatment extends beyond making the right decision based on the facts at hand – it also relates to following the correct process, and the quality of the interpersonal treatment. In this case it was unfair to withhold information from the homeowner about how to contest the decision.

Case Study 5: Inaccurate Communication

The Ombudsperson Office received a telephone call from a homeowner who was upset about inaccurate communication from Tarion. The homeowner had received a letter from Tarion stating that his conciliation was cancelled because he had not paid the conciliation fee. The letter further stated that Tarion would consider the case closed. The homeowner agreed that the inspection had been cancelled, but only because the FCR had facilitated an agreement for the builder to complete work in the home in exchange for the homeowner cancelling the inspection. Since Tarion had facilitated the agreement, the homeowner felt that it was different than if he had cancelled the inspection on his own. The homeowner was disappointed that the Tarion letter contradicted the agreement which involved a specific timeline for the repair, and allowed the homeowner to request an inspection if the builder did not complete the items by a specific date.

Action and resolution: The Ombudsperson reviewed the records on file for the home, and determined that the letter had been sent in error. There was a note regarding the agreement and the specific timeline for the repair to be completed. We requested that a letter with the correct information be sent to confirm the status of the agreement, and the deadline for the work to be completed.

Comment: Tarion taking an active role in encouraging homeowners and builders to resolve warranty disputes is a valuable process. In this case the FCR had helped achieve a fair settlement without requiring an inspection. Our concern was to ensure Tarion had appropriate measures to support the process. The Ombudsperson also discussed this case with Tarion, and identified the process used to cancel inspections as a possible systemic issue. At our request, Tarion has implemented a process to ensure that there is appropriate documentation of these agreements.

Case Study 6: Unfair Assessment

A homeowner contacted the Ombudsperson Office to complain that Tarion was treating her unfairly. Her builder had been deemed “unwilling and unable” to fulfill his warranty obligations, so Tarion was acting on behalf of the builder. This meant that Tarion was responsible for resolving any warranted items directly with the homeowner. She said that there had been many unexplained delays in dealing with her claim. She stated that Tarion was ignoring a health and safety violation of the Ontario Building Code. She also said that Tarion’s decisions were nonsensical. The homeowner provided a list of concerns with the Warranty Assessment Report (the Report), and the process Tarion used to identify defects in three areas of her home.



Action and resolution: The Ombudsperson reviewed the concerns and Tarion’s decision. We were concerned that the conclusions in the Report were not supported by the case record, or in communications with the homeowner. The case documentation and supporting emails also suggested that the FCR thought the homeowner was exaggerating the reported defects in order to ensure a greater cash settlement from Tarion. There was no evidence in the file to suggest that the homeowner was exaggerating the problems in the home.

It was determined during our preliminary analysis that the situation was unfair. The comments of the FCR suggested bias in decision-making, and our analysis demonstrated that the decision-making was flawed.

We determined that either the decision was wrong (as evidenced by the conclusion not being supported by facts), or if the decision was correct it was unfair because it was not adequately explained to the homeowner.

During this assessment we determined that the homeowner had not followed Tarion's complaint process; therefore we referred the issue to the Field Claim Manager and asked that the complaint be reviewed. We highlighted our concerns with the delays, the perceived bias and the decision, and recommended a re-inspection. The defects were re-inspected, and two of the items determined to be warranted. Tarion provided additional information so the homeowner understood why the other item was not warranted, and that the home was safe. The Field Claim Manager also ensured that a contractor was hired to make all the necessary repairs.

Comment: In this case the Ombudsperson Office identified problems with the decision, and asked for the manager to review them. It would not have been appropriate to investigate the complaint because the homeowner had not yet addressed his concerns to the Field Claim Manager. This case study illustrates the role of the Ombudsperson Office in identifying fairness issues, and how we can promote fairness through timely interventions.

This case is an important example of the complex situation when Tarion takes over responsibility for repairs when there is an unwilling and unable builder. In these cases, Tarion plays several roles in determining if there is a defect and taking responsibility for

ensuring repairs are completed. In effect Tarion becomes a party to the dispute, rather than a third party adjudicating between a homeowner and builder. It is the experience of the Ombudsperson Office that these cases are often the most difficult. There are times when it appears that Tarion loses sight of the objective to balance the desire to protect the Guarantee Fund with the legislative requirements of the Act to administer and enforce the warranty fairly.

Case Study 7: Taking the Time to Listen and Explain

A homeowner contacted the Ombudsperson after learning that a reported Major Structural Defect warranty claim would not be warranted. The homeowner stated that Tarion had attended his home to inspect the defect, but it was not found to be warranted. He was dissatisfied with the decision. Tarion had informed the homeowner of his right of appeal to the License Appeal Tribunal, and he was considering requesting a Decision Letter. During the conversation with the Ombudsperson Office, the homeowner stated that he was disappointed with findings and had specific questions about the Warranty Assessment Report.

Action and resolution: When we reviewed the case, it did not appear that the inspection or results were unfair; however we observed that the inspector was no longer with Tarion. The Ombudsperson suggested that re-inspection would be appropriate because no one was available to answer the homeowner's questions, or author a Decision Letter. Tarion agreed to



re-inspect the reported defect. Following the re-inspection, it was determined not to be a warranted defect, but the newly assigned FCR spent time re-viewing the problem, and providing detailed answers to questions. The homeowner contacted our office to report that he was satisfied with the results of the inspection, and that he had decided that it was not necessary to request a Decision Letter.

Comment: We have chosen to include this case because it is an example of fair treatment. This case is significant because the FCR took the time to ensure that the homeowner felt heard, and the defect fully assessed. The actions of the FCR prevented a possible appeal to the tribunal and helped the homeowner understand why the problems were not warranted. By taking the extra time to understand the homeowner's perspective, the FCR was able to turn a negative experience into a positive one.

Case Study 8: Old Cases and New Information

An owner of a four year old home contacted Tarion to request that her year-end case be re-opened because she had new information about defects that were reported on the Year-End Form. The homeowner had submitted warranty claims in her first and second year, and had followed the warranty process. The cases were resolved, and had been closed for several years. Tarion refused to re-open the case because it was resolved, and a significant amount of time had

passed. The homeowner then contacted the Ombudsperson.

Action and resolution: We were concerned that the request was denied without looking to see if the information was relevant. The office reviewed the file, and determined that it would not be appropriate to re-open the Year-End case because the homeowner had received a settlement from the builder, and had released all claims related to the Year-End case.

The settlement was not applicable to the items claimed by the homeowner on their Second Year Form. The new information was relevant to the defects reported on the Second Year case. We concluded that it should be considered because it was not subject to the settlement of the Year-End case. We recommended that the information should be reviewed to assess its impact on the Second Year case. The claims department assessed how the information related to the Second Year case, and provided a detailed response to the homeowner.

Comment: In order for Tarion to make fair and logical decisions, it must be open to receiving and reviewing information provided by homeowners. In cases where the information does not change the decision, Tarion should also explain its decision. This case shows the importance of understanding a complaint and not dismissing it out of hand because the case is closed.



RECOMMENDATIONS

The mandate for the Ombudsperson is to resolve individual complaints and address systemic issues. 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 2011, the Ombudsperson Office made a number of case specific recommendations. Some examples include:

- The Ombudsperson Office received a call from a homeowner who had a sewage leak in his home. We identified that the builder did not do a Pre-Delivery Inspection, did not submit the Certificate of Completion and Possession and did not provide the owners with a Homeowner Information Package. The Ombudsperson Office helped to identify the appropriate start date for the warranty, and recommended a process to deal with defects that would have been reported on a 30-Day Form. Tarion accepted the recommendation, and worked with the homeowner and builder to address any outstanding warranty concerns.
- A homeowner complained about Tarion not responding to her or her requests for information. We reviewed the case and information on file, and determined that the homeowner had not received responses to her inquiries. We requested that Tarion respond to the homeowner and provide the information she was seeking, and apologize for a delay in responding.
- A homeowner contacted the Ombudsperson Office to complain about how Tarion was working to resolve mould in his home. We made recommendations to improve communication with the homeowner and to resolve the complaint. We also used this case as part of a systemic review of how Tarion handles mould issues. This review resulted in formal recommendations to revise the claims process when mould is present.
- We recommended that Tarion provide reasons to support its decision not to open a year-end case several years after it had been closed.
- We conducted an investigation into how Tarion handled the claim process in an emergency situation. We then recommended staff training on the emergency process and investigative inspections. We also recommended a change in the process for decision letters in these situations.

Systemic recommendations:

The Ombudsperson Office is in regular communication with Tarion regarding the implementation of our recommendations. During 2011 we also worked with management to implement a process where Tarion provides updates to the Consumer Committee of the Board of Directors regarding progress made in response to the recommendations.

2009 Recommendations:

In the 2009 Annual Report, the Ombudsperson made five systemic recommendations. Tarion developed a plan to implement the recommendations. One aspect was still outstanding when the 2010 Annual Report was published. Tarion has since implemented all of the commitments made in response to the 2009 recommendations.

2010 Recommendations:

Gaps in Special Seasonal Warranty Coverage

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 to ensure special seasonal items receive the same warranty coverage as the rest of the home.

Tarion 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), if a

gap exists, a solution may not be possible in 2011.

Ombudsperson assessment: Tarion's response to this recommendation has not been implemented. Tarion studied the issue and presented some options to deal with the issue, but has not identified a solution or a timeline for its implementation. Last year, in its response to the recommendation, Tarion management identified that there may be a delay in resolving the recommendation if the resolution necessitates a change in Tarion's regulations. As this issue is not resolved, it creates the potential that full implementation may be delayed until 2013. Tarion's response to the recommendation is not satisfactory.

Best Practices for Assessing Chargeability of Conciliations

Recommendation: The Ombudsperson recommended 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 that information provided by the builder is accurate, and understanding if there are any mitigating circumstances that Tarion should be aware of in making its determination.

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.

Tarion response: In 2011 the Claims Department will review best practices for determining if a conciliation should be considered 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.

Ombudsperson assessment: Tarion acted quickly to ensure that chargeability decisions are made according to the rules in Builder Bulletin 42, and developed

a process to audit chargeability decisions. Tarion is evaluating how this process is functioning, and intends to develop a guideline for external stakeholders in 2012. Tarion acted quickly to review the criteria for chargeability and develop an audit process, but has not fully implemented what it committed to in last year's report. Tarion has not met all of its commitments to implement the recommendation, but reports that it intends to complete the recommendation in 2012.

Conciliation Cancellations

Recommendation: The Ombudsperson recommends that when homeowners cancel conciliations, Tarion must inform homeowners 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.

Tarion response: In 2011, the Claims Department will review the experience of FCRs and their contacts with homeowners and builders after the homeowner's request for conciliation but before any conciliation inspection has occurred. 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 Ombudspersons recommendations.

Ombudsperson assessment: This recommendation was fully implemented by Tarion in the summer of 2011.

2011 Recommendations

Mould Investigation and Remediation

Since the Ombudsperson Office was established, we have received a number of complaints about how Tarion deals with warranty defects that involve mould. In 2011 we conducted a review of all of the cases where homeowners complained about Tarion's response to the presence of mould in their homes. These complaints represent only a fraction of the cases that

Tarion receives, however, the review allowed us to identify themes and trends across the cases that were brought to our office. Our review of these files and our observations raised concerns with the consistency of how these cases are handled. We concluded that Tarion's guidelines for dealing with suspected mould were contradictory, inaccessible and unusable. As a result, the guidelines were not being followed.

During our review we came to understand that the Claims Department was reviewing its procedures and guidelines related to common warranty claims and concerns. The mould guideline was also subject to this review. The Ombudsperson highlighted concerns about the current guideline and seven aspects of the process. These included concerns with:

1. The purpose of the Mould Guideline
2. Timelines for assessment and remediation
3. The process used for mould testing and determining the scope of problem
4. The standards used for determining if the defect is warranted
5. How Tarion applies its health and safety criteria
6. The remediation process
7. Communication with homeowners throughout the process

We recommended that these concerns be considered during the review of the Mould Guideline, and that the guideline be revised to provide a clear process for the assessment and remediation of mould.

Plain Language Best Practices

The majority of communication that Tarion engages in with homeowners is written – whether it be general information about the warranties (the Tarion.com website, and publications, including the Homeowner Information Package and Builder Bulletins), or information specific to individual homes (letters, emails, and Warranty Assessment Reports). Tarion faces a challenge

in presenting technical language in a way that is clear and meaningful. Tarion needs to communicate the requirements of the Ontario New Home Warranties Plan Act, and technical assessments of reported defects, however, it is our experience that Tarion's communication is not consistently clear and understandable. The Ombudsperson Office has observed several cases where overly complicated language has confused or raised additional issues with homeowners. In some cases, problems are caused by complicated publications; others were caused because homeowners did not understand their own responsibilities within Tarion's process. In one case a homeowner did not understand that by cancelling an inspection, they were withdrawing their warranty claim. They had received a letter to explain how Tarion would deal with their case, but the homeowners did not understand the letter. We have also seen cases where homeowners did not understand warranty assessments because of the complicated language in the report.

One way to avoid these problems is to develop a plain language approach to communication. Clear communication helps to ensure that there is equitable access to Tarion's services. Making Tarion's communication clear is consistent with the objectives of Tarion's internal customer service program called "the Tarion Way."

In recent years several Tarion departments have started a variety of initiatives to make language more understandable. These initiatives have come from different departments, lacking a corporate standard and achieved varying degrees of success. In some cases simplifying the language has removed critical information, or has not made the message any clearer. There is a demonstrable need to ensure that Tarion's communication is clear and understandable, however, Tarion struggles to achieve that objective.

In order to address this challenge, I recommend that Tarion should develop and adopt corporate standards for best practices in plain language communication. These standards should be incorporated into Tarion's corporate communication. Tarion should develop or adopt tools to support clear communication, and make

resources and training available to staff. Staff should be encouraged to incorporate clear communication principles into their daily work.

Homeowner Information Packages - Builder Bulletin 42

Tarion has created a series of Builder Bulletins which establish rules and guidelines under which Tarion administers the Ontario New Home Warranties Plan Act. Tarion Builder Bulletin 42 establishes the Customer Service Standard for the warranty process for freehold homes and condominium units. The bulletin involves four parts:

- **Part A: The Homeowner Information Package**
 - This document is published by Tarion and provides purchasers with an outline of the responsibilities of the homeowner, Tarion and the builder;
- **Part B: The Pre-Delivery Inspection**
 - This is a mandatory home inspection that builders are required to conduct with purchasers on or before the date of possession;
- **Part C: The Statutory Warranty Claims Process**
 - This process governs how homeowners must submit Statutory Warranty Forms for warranty claims, timelines within which builders must respond to and resolve claims and the role of Tarion in the process; and
- **Part D: Warranty Review**
 - A builder-requested conciliation.

The Ombudsperson Office has identified a concern with the implementation of Part A.

Part A of Builder Bulletin 42 stipulates that builders are required to provide a copy of the Homeowner Information Package to purchasers at or before the Pre-Delivery Inspection. The Homeowner Information Package is an essential tool for purchasers of new homes because it provides critical information about the warranty process, and explains how to ensure their warranty rights are not jeopardized.

It is our experience that not all builders are meeting their obligations under Part A of Builder Bulletin 42, and Tarion does not consistently hold builders accountable for their failure to follow this aspect of the bulletin. Part B of the bulletin specifically states that the builder's failure to follow Part B will be considered as part of the annual renewal process. Part C measures builders' compliance with the determination of chargeability of inspections. Provision of the Homeowner Information Package is the foundation for the remainder of the warranty process, but there is no mechanism to reinforce compliance with Part A.

We have experienced several cases where builders do not provide the Homeowner Information Package to homeowners. As a result, homeowners are not informed of their warranty rights. If discovered within the first year, Tarion has some flexibility to deal with reported defects because the home is still under the first year warranty for material and workmanship. In cases where homeowners do not find out about the warranty until after warranty period has expired, they are left with no warranty protection due to the limitations in the Ontario New Homes Warranties Plan Act. This means that homeowners have no warranty protection and no recourse through Tarion. At the same time, builders are under no obligation to fix problems within the home, and face no formal repercussions for not complying with Builder Bulletin 42.

Providing the Homeowner Information Package to homeowners ensures that they are given information about the mandatory warranties, the process for resolving warranty complaints and their responsibilities within the process. This package also serves as the foundation for the Pre-Delivery Inspection and the Warranty Claim Process. The Ombudsperson Office is concerned that there is no formal process to hold builders accountable for avoiding their obligations under the warranty. We recommend that Tarion develop a more effective mechanism to ensure that builders comply with the requirement to provide the Homeowner Information Package and a mechanism to better protect consumers who fall victim to builders who fail to provide them with this required information.

MANAGEMENT RESPONSE



We remain committed to acting on a wide range of issues raised by the Ombudsperson to ensure a high level of public accountability

It is part of the mandate of the Ombudsperson Office to identify complaint trends and systemic issues, and 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 2011 Ombudsperson Annual Report.

Mould

The Ombudsperson recommends that seven concerns with the mould guideline be considered during the review of the Mould Guideline, and that the guideline be revised to provide a clear process for the assessment and remediation of mould. Warranty Services will undertake a review of that guideline bearing in mind the ombudsperson's recommendations. A revised guideline will be ready for implementation/ Training for the fall of 2012.

Plain Language

The Ombudsperson recommends that Tarion should develop and adopt corporate standards for best practices in plain language communication. These standards should be incorporated into Tarion's corporate communication. Tarion should develop or adopt tools to support clear communication, and make resources and training available to staff. Staff should be encouraged to incorporate clear communication principles into their daily work.

Warranty Services will (a) identify a simple plain language guideline for distribution to staff; (b) encourage staff to follow the guideline; (c) work with corporate affairs to get feedback on a sample of stakeholder communications to assess how they meet best practices in plain language communication and (d) work with HR to ensure that more specific training is available for staff where appropriate.

BB 42 – Part A – Requirement to provide HIP

The Ombudsperson recommends that Tarion develop a more effective mechanism to ensure that builders

comply with the requirement to provide the Homeowner Information Package and a mechanism to better protect consumers who fall victim to builders who fail to provide them with this required information.

In the short term, the Licensing and Underwriting department (L&U) will continue to consider terms and conditions of renewal when a builder has been found not to be providing HIPs to his/her homeowners. In the medium term, L&U and Warranty Services will collaborate and develop a written policy addressing how compliance with HIP delivery is monitored and the consequences which apply when a builder fails to comply. The policy will take into consideration processes that impact HIP delivery and communication as well as the relevant sections of Builder Bulletin 42.

2010 Recommendations

We regret that we did not meet our 2011 timetable for commitments in relation to a review of our approach to the Special Seasonal coverage process. We are committed to addressing the Ombudsperson's recommendations in this regard. A series of recommendations have been developed for management's consideration and will be assessed by the end of Q2 2012. A report will be provided setting out the recommendations considered, the approach taken along with timelines for implementation (recognizing that some elements of the special seasonal rules are fixed by statute and others are embedded in the Customer Service Standard process fixed by Builder Bulletin 42)

Management would like to thank the Ombudsperson Office for its work this past year. As the administrators of the Ontario New Home Warranties Plan Act, we believe we should be held to a high standard with respect to public accountability. We respect the role the Ombudsperson Office plays in making this so.

Howard Bogach
President and CEO
Tarion Warranty Corporation