

INDEPENDENT DISPUTE RESOLUTION REVIEW, 2015

BACKGROUND

Tarion is a private, not-for-profit organization that administers the Ontario New Home Warranties Plan Act (the “Act”). Before it was created by the Ontario Government in 1976, Ontario new home buyers and new homeowners had no standardized, mandatory new home warranty protection. Tarion was and is tasked with the dual role of i) administering the warranty protection program for Ontario new home consumers; and (ii) regulating and licensing new home builders.

In January, 2015 Tarion retained the services of Ms. Genevieve Chornenki, an independent dispute resolution practitioner with more than 25 years of experience, to conduct an “end-to-end” review of its processes for managing statutory warranty claims using a dispute resolution lens. While Tarion has regularly revised and reviewed its warranty claims processes and made improvements to its dispute resolution methods, this is the first time they have been examined externally with effective and modern dispute resolution practices in mind.

This review was initiated by Tarion as part of its ongoing commitment to consumer protection. Ms. Chornenki was provided full and unfettered access to Tarion’s business including its records and staff. Tarion’s purpose in commissioning this review was to better understand its warranty claim processes from a homeowner’s perspective and to obtain recommendations for improvement. This document summarizes Ms. Chornenki’s key findings. The full report which was delivered to Tarion on September 1, 2015 can be found [here](#).

OVERVIEW

“I observed a customer-service oriented culture at Tarion that works to understand and serve its constituents better.”

Ms. Chornenki describes Tarion as a large, complex organization that has evolved and adapted considerably over the past 40 years. Its dispute resolution function has likewise changed. This review forms part of the next phase of this continuous adaptation process. It offers valuable insights into our existing dispute resolution process and recommends improvements that align with current best practices in the field of dispute resolution. This includes strategies on how Tarion can better communicate with homeowners to make the warranty claims process more accessible and understandable. Ms. Chornenki stresses that all of her recommendations can be implemented within the current structure of Tarion. At no time, does she suggest the presence of any systemic problems or biases inside Tarion that require a disruption of current operations. As she puts it:

*“...there are additional steps that Tarion must take to strengthen its dispute resolution role in a contemporary consumer protection context. To some extent, this will involve a change of emphasis. **It would not, I wish to stress, involve disrupting its operation or dismantling what Tarion has developed to date.**” (Page 14)*

Ms. Chornenki identifies Tarion's role as a very sophisticated and challenging one given the technical and emotional components involved in resolving new home warranty disputes. Both homeowners and builders place high expectations on Tarion's representatives to make the correct decision. Most significantly, she formed an impression of Tarion as an *“open, values-based organization with a commitment to continual improvement – all good things in relation to dispute resolution.”* (Page 13)

Ms. Chornenki described the depth and breadth of the information that Tarion elicits and analyzes in order to understand homeowners' experience and needs as impressive. Further, ongoing refinements to Tarion's processes are positive and consistent with its dispute resolution mandate. For example, the “Work The File” and “Early Intervention” initiatives are intended to help improve customer service

interactions and communications, and encourage the early resolution of warranty claims.

“At a corporate level, Tarion is also committed to continual improvement, a dispute resolution design standard that requires a dispute resolution organization to be alert to opportunities to improve its process and the experience of its users.”

Ms. Chornenki explains that Tarion’s dispute resolution process occurs in stages with homeowner warranty claims moving up a ladder of increased intervention by Tarion. She notes that the vast majority of warranty claims are resolved amicably by homeowners and builders before they reach upper rungs of the dispute resolution ladder. Further, with the small percentage of warranty assessments that are challenged by the homeowner, there is no deliberate or systemic bias at Tarion to stream these contested warranty claims to the Licence Appeal Tribunal or to wait until a tribunal hearing to settle with homeowners. Rather, there are ongoing and persistent attempts at a resolution by Tarion at all stages of the appeal process.

“Tarion’s data indicate that in 2014, there were 365,392 homes under warranty. That year, Tarion received 56,312 warranty claim forms. Only 797 (1.4 per cent) of these proceeded to the investigation stage with a conciliation inspection. One hundred and fifty (0.3 per cent) required decision letters, and 103 (0.2 per cent) were appealed to LAT.”

It is in the small percentage of claims that reach the investigative stage and beyond where Tarion can improve its dispute resolution process. While these types of claims represent a very small percentage of the total number of homes under warranty, they command the majority of complaints and public criticism. Ms. Chornenki recommends that Tarion reinforce its role as an impartial dispute resolver by bringing its dispute resolution function in line with contemporary dispute resolution best practices. This includes devoting adequate resources to resolving these higher rung disputes and to further focusing on impartiality and the correctness of its assessments.

PRINCIPAL THEMES

As noted above, Tarion is an organization dedicated to continuous improvement and welcomes the very constructive and helpful discussion in the report, and the recommendations for improvements. As an overview, Tarion recognizes the following principal themes:

Refining the claims process

- The statutory warranty claims process needs refinement to bring it in line with more recently developed dispute resolution theory and best practices. In Tarion's case, better processes are needed to deal with the multiple functions of investigation, facilitation, conciliation and adjudication.

Better communication for homeowners

- Better (simpler, more timely, more accessible) communication to homeowners on the warranty claims process and homeowner rights and obligations at various stages; including opportunities for engaging staff and what is expected in making warranty claims.

Staff training

- Better training of staff, in particular in areas of dispute resolution, managing the hybrid process of facilitation evolving to adjudication, ensuring fairness of process and evidence-based decision making and writing.

Third party experts

- Earlier and more frequent consultation with third party experts where appropriate.
- Involvement of third party expert(s) to help guide changes to processes and the design and content of additional training.



Understanding LAT processes

- Although LAT is an independent agency, consider ways to assist homeowners in understanding LAT processes and rules; and consider best practices for making the forum more accessible to self-represented applicants.

RESPONSE

We wish to thank Ms. Chornenki for this thorough and detailed review. As a result of our decision to undertake this review, we now have independent findings, professional explanations, and valuable recommendations to consider. We acknowledge all of the recommendations contained in the report, and commit to assessing each one on its own merits and, where and as appropriate, incorporating them into our processes.

The full report can be found [here](#).