



**Citation: Merani v. Tarion Warranty Corporation 2026 ONLAT ONHWPA 17790**

**Licence Appeal Tribunal File Number: 17790/ONHWPA**

In the matter of an appeal from a decision of Tarion Warranty Corporation under s. 14 of the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (the “Act”),

Between:

**Shelina Merani**

**Appellant**

And

**Tarion Warranty Corporation**

**Respondent**

**DECISION**

**ADJUDICATORS:**

**Bruce Stanton, Member**

**Dagmar Boettcher, Member**

**APPEARANCES:**

For the Appellant:

Joseph Griffiths, Counsel

For the Respondent:

Ayesha Mehreen, Counsel

**Heard by videoconference**

February 20, 2026

## OVERVIEW

- [1] Shelina Merani (the “appellant”) appeals the Decision Letter (“DL”) issued by Tarion Warranty Corporation (“Tarion”) dated July 29, 2025 under section 14(13) of the *Ontario New Home Warranties Plan Act*, RSO 1990, c. O.31 (“*Act*”) on the appellant’s Major Structural Defect (“MSD”) claim form.
- [2] The appellant entered into an Agreement of Purchase and Sale (“APS”) for a new home with Legacy Homes (“builder”) on June 17, 2013 and took possession of the home on December 3, 2013.
- [3] The MSD claim period ended on December 14, 2020. On July 20, 2025, the appellant submitted the MSD claim form. Tarion denied the claim on the basis that it was filed outside of the seven-year warranty period.
- [4] The appellant filed an appeal of the DL with the Licence Appeal Tribunal (“Tribunal”) on September 30, 2025.

### Subsequent Submissions

- [5] In attempting to apply the appropriate legislative provisions to the facts before us, we sought clarification from the parties, following the hearing, in respect to two questions.
  1. whether the appellant’s home is considered a post June 30, 2012 home under O. Reg. 892 (“Regulation”), *i.e.*, was the APS signed after June 30, 2012; and
  2. whether s. 14(4) of the *Act* is applicable in relation to the time limit by which a homeowner must file an MSD claim.
- [6] The appellant’s subsequent submission of March 13, 2026 confirmed that she owns a post June 30, 2012 home. Tarion submitted that since the APS was not entered into evidence, it cannot verify that the home is a post June 30, 2012 home. Since it appears that the date the APS was signed is not controversial, and as will become evident below, ultimately does not impact our analysis of the issue in dispute, we accept the appellant owns a post June 30, 2012 home.
- [7] Both the appellant and Tarion submit that s. 14(4) of the *Act* is not relevant in this case, although for different reasons. The appellant submits s. 14(4) is not relevant because there has been no claim made for compensation out of the guarantee fund and that s. 14(4) should not drive the interpretation of s. 4.6 and s. 5.10 of the Regulation. Tarion submits that s. 14(4) is not relevant as it has

been overridden by the 7-year MSD claim period prescribed in s. 1 of the Regulation.

- [8] We accept the parties' positions on the applicability of s. 14(4) to the case before us and agree it is not determinative of the issue before us.

## ISSUE

- [9] The issue to be determined is:

1. Whether Tarion ought to have exercised its discretion, pursuant to s. 5.10 of the Regulation, to extend the appellant's timeline for filing a Major Structural Defect claim.

## RESULT

- [10] The appellant met her burden to establish, on a balance of probabilities, that Tarion ought to have exercised its discretion to extend the timeline for filing the Major Structural Defect claim.

## ANALYSIS

### ***Extending the timeline for a MSD claim***

- [11] The *Act* provides that every vendor of a new home warrants to the owner that, among other things, the home is free of "major structural defects" as defined by the Regulation. The home in this matter is a residential dwelling as defined under s. 1(c) of the *Act*.

- [12] Section 5.9(1) of the Regulation sets out the requirements for MSD claims for post June 30, 2012 homes, as follows:

In order to make a major structural defect claim in respect of a post June 30, 2012 home, the owner shall complete and submit to the Corporation [Tarion] a major structural defect form during the major structural defect claim period.

- [13] Section 1 of the Regulation defines "major structural defect claim period" as:

The period beginning immediately after the date of possession and ending on the seventh anniversary of the date of possession, in the case of a warranty claim made under section 4.6.

*The Regulation is silent on the definition of "major structural defect claim period" in respect to s. 5.9 (post June 30, 2012 homes)*

- [14] We find that the major structural defect claim period for purposes of s. 5.9 of the

Regulation, should be read as it is defined for s. 4.6.

- [15] Section 5.9 of the Regulation sets out the MSD claim procedures for post June 30, 2012 homes, which stipulates that a MSD claim be “completed and submitted” during the “major structural defect claim period”, but the definition of major structural defect claim period in s. 1 only refers to homes other than post June 30, 2012 homes (per s. 4.6).
- [16] It appears the Regulation does not specifically define “major structural defect claim period” for the purposes of s. 5.9 (post June 30, 2012 homes).
- [17] Tarion noted this drafting error in the Regulation in its subsequent submission of March 13, 2026 and agrees that the Regulation is silent on the definition of the “major structural defect claim period” with respect to post June 30, 2012 homes. Tarion submits that the major structural claim period for s. 5.9 should be considered to be read as it is written for s. 4.6 because this reading is consistent with a broad, liberal interpretation of the consumer protection intention of the legislation.
- [16] Further, Tarion submits that if the Tribunal does not interpret the “major structural defect period” as applying to s. 4.6 and s. 5.9 equally, then post June 30, 2012 homes would have a MSD warranty period of only 5 years pursuant to s. 14(4) (which establishes a 5-year time limit). Tarion submits that this would be untenable and not consumer friendly and there is no indication that the *Act* intended a two-tier warranty scheme.
- [17] The appellant submits that the s. 1 definition of major structural defect claim period identifies “the period during which the home is protected by the major structural defect warranty”. She submits that she is not seeking to extend the warranty period, only the timeline by which she can file her claim for major structural defects that occurred during the warranty period.
- [18] We are persuaded by Tarion’s submissions and recognize that the purpose of the *Act* and Regulation is to provide consumer protection (see, e.g., Divisional Court rulings *375 Lakeshore Developments Inc. v. Tong*, 2021 ONSC 1820 at para. 97; *Newport Beach Development Inc.*, at para. 67; and *Liddiard v. Tarion Warranty Corp.*, 2009 ONSCDC 65801, 99 O.R. (3d) 656 (Div. Ct.), at para. 59). The Divisional Court has consistently emphasized the importance of upholding the consumer protection purposes of the legislation and cautioned against using an unnecessarily rigid, restrictive approach, such that the rights of the appellants are diminished and the interests of respondents advanced. We are mindful of this and have considered the consumer protection purposes of the legislation and Tarion’s emphasis on this in its subsequent submission.

[19] We find, therefore, that the definition of major structural defect claim period for post June 30, 2012 homes, for the purposes of s. 5.9 of the Regulation, should be read and interpreted just as it is defined in s. 4.6.

*Must a MSD claim be filed no later than the 7-year anniversary of possession pursuant to s. 1 and s. 5.9 of the Regulation?*

[20] The parties agree that the MSD warranty period for the appellant's home ended on December 14, 2020, however, they disagree on the timeline to file a MSD claim. The appellant submits the two issues are distinct; the first being the duration of the substantive warranty (7 years to December 14, 2020), which is not in dispute, and the second being the administrative timeline to submit a claim for a MSD claim that occurred within the warranty period. She submits the latter is subject to the discretion granted to Tarion in the Regulation pursuant to s. 5.10.

[21] Tarion's position is that a MSD claim must be filed no later than the 7-year anniversary. It submits that the issue in dispute centres on a timing issue and that the MSD claim form was due on December 14, 2020. It submits it has no discretion to extend the time for filing the MSD under the *Act*.

[22] We disagree. We find that a claim for a MSD can be filed after the end of the 7-year MSD warranty, pursuant to s. 5.10 of the Regulation.

[23] Section 5.10 provides that Tarion may, in its sole discretion, extend any timelines specified within its various warranties set out in sections 4.1 to 4.6, 5.1, 5.1.1, 5.2, 5.5 to 5.7 and 5.9 if it determines that:

(a) the vendor is unable or unwilling to address a claim item on a claim form;

(b) a claim item,

(i) involves health and safety, seasonal repairs or an emergency, or

**(ii) involves other extraordinary circumstances**  
*(emphasis added).*

[24] The appellant submits that Tarion is conflating the procedural deadline (the timeline to submit a claim) with the statutory time limit for defects or deficiencies covered by the MSD warranty. She submits there is a clear distinction within the *Act* and Regulation between the major structural defect period, that being 7 years from date of possession, and the period in which a homeowner may file a

MSD claim. She submits the Regulation does not prescribe the deadline for submitting the MSD and adds that the defect that is the subject of her MSD claim arose during the 7-Year major structural defect warranty period and Tarion has discretion under s. 5.10 to extend the deadline for filing a MSD claim form on those defects.

- [25] Tarion submits that the MSD claim period cannot be extended and relies on *Greenberg v Ontario New Home Warranty Program*, [1998] O.J. No. 6083 (Div. Ct.) (“*Greenberg*”). We are not persuaded by Tarion’s reliance on *Greenberg*, and in particular, note that Tarion highlighted a portion of the decision that refers to the predecessor of the current Tribunal, the Ontario Commercial Registration Appeals Tribunal (“OCRAT”). *Greenberg* found that the OCRAT could not extend the date on which a warranty commences. The appellant (in *Greenberg*) then appealed to the Divisional Court, which confirmed the OCRAT decision. The issue before us is not whether Tarion should have extended the MSD statutory warranty period, but rather whether it ought to have exercised its discretion under s. 5.10 of the Regulation to extend the timeline to file the MSD claim form. Tarion has not established whether the legislation in place in 1998 contained a similar provision to s. 5.10. We therefore have placed less reliance on the *Greenberg* decision.
- [26] Tarion also referred us to *AE & ME v Tarion Warranty Corporation*, 2018 CanLII 100195 (“*AE & ME*”), noting, at paragraph 19, that it cannot extend deadlines for delayed closing [warranties] for any reason. In the same paragraph, Tarion notes that s. 5.10 does not apply to the delayed closing warranty. We are not persuaded that *AE & ME* is relevant to the circumstances in this case because it pertains to a warranty dispute [delayed closing] that is not afforded discretion to extend timelines under s. 5.10.
- [27] We are not persuaded by Tarion’s case law submissions that it has no discretion to accept a MSD claim form after the 7-year limit. We find that the timeline for a homeowner to submit a MSD claim form falls under s. 5.9 of the Regulation, which is a provision to which the discretion to abridge or extend a timeline under s. 5.10 of the Regulation applies.
- [28] We find that Tarion can, at its discretion, accept a MSD claim form after the 7-year time limit, pursuant to s. 5.10 of the Regulation.

***Does the appellant’s claim involve other extraordinary circumstances?***

*What constitutes “other extraordinary circumstances”?*

- [29] The appellant claims that she faced “other extraordinary circumstances” in

relation to her MSD claim that warranted extending the timeline.

[30] The regulation does not define “other extraordinary circumstances”, the parties pointed us to previous decisions of the Tribunal for guidance on what characterizes extraordinary circumstances for the purposes of s. 5.10(b)(ii).

[31] Tarion referred us to *10249 v Tarion Warranty Corporation*, 2016 CanLII 100992 (“*10249*”) which pertains to a failure by appellants to file a conciliation request within the legislated timeline. In *10249 v Tarion*, Tarion pointed to the discretionary power afforded it within s. 5.10 at page 6 of the decision, which states:

The Tribunal finds that the power to extend the time limit in s. 5.10 is a broad discretion that should be exercised in a manner consistent with the remedial consumer protection nature of this legislation.

[32] The Tribunal found that the circumstances faced by the appellants in *10249 v Tarion*, fell within the meaning of “extraordinary circumstances” and it ordered Tarion to extend the time for requesting conciliation. It is noteworthy that the circumstances of the appellants, in that case, appear to have involved missing the conciliation deadline because:

- a) a report of the carpet defect from an inspection in October 2015 was not received by the appellants until January 2016 and the appellants were away during the month of November 2015; and
- b) the sole notice of the conciliation deadline (between September 18 and October 19, 2015) was automatically generated in Tarion’s MyHome portal by virtue of the appellant’s failing to check a “box” on the portal to opt out of email communications.

[33] The Tribunal noted that some confusion over the conciliation deadline by the appellants was understandable, considering that the builder scheduled an inspection of the carpet on October 15, 2015 (4 days before the conciliation deadline). It also noted that communications between the appellants and Tarion suffered from the appellants not being at ease with the online filing process, and in the lead-up to the conciliation deadline, their telephone conversations with Tarion representatives were devoid of any mention of the looming conciliation deadline.

[34] In *10249 v Tarion*, the Tribunal stated that it is well settled that the *Act* is remedial consumer protection-purposed legislation and that s. 5.10 uses permissive language, which should be given a fair, broad and liberal

interpretation. The Tribunal noted that whether to exercise that discretion must be assessed in the context of the particular facts. The Tribunal found that at no time did the evidence indicate that the appellants considered the claim withdrawn and found also that information which should have been provided to the appellants, was delayed. The Tribunal found that carpet defect issue, that was the subject of the conciliation, was very much a live issue with ongoing progress and involvement by the appellants in the warranty process. The Tribunal found that the circumstances relating to this claim item fell within the meaning of other extraordinary circumstances under s. 5.10(b)(ii) and determined that Tarion must assess the claim as though it had been made within the statutory timeline.

- [35] Tarion directed us to the Tribunal's decision in *11136 v. Tarion Warranty Corporation*, 2018 CanLII 107936 ("*BE & SE*") which establishes, at paragraphs 43 and 44, that an appellant who is aware of the warranty claims process should make a MSD claim within the warranty period "to preserve access to their warranty in case the builder failed to resolve the issue."
- [36] *BE & SE* was a case that centered on whether Tarion had misled the appellants in a way that caused them to refrain from submitting a MSD claim on time, and whether that amounted to extraordinary circumstances that warranted an extension of the claim period. The appellants took occupancy of the home on June 18, 2010. A sewer drain back-up issue began in March 2013. The problem reappeared in November 2013 and once or twice every year, thereafter.
- [37] The appellants attempted to address the sewer back-up issue through to 2016 working with the builder and third-party contract services, but without success. They eventually contacted Tarion approximately 7 to 8 months prior to the expiry of the MSD warranty period and were advised that the sewer drain problem does not meet the definition of a MSD and they should work with the builder to resolve the issue.
- [38] The appellants attempted to do so but the builder delayed promised repairs until spring of the following year and eventually the time frame for submitting the MSD expired. The appellants claimed that Tarion had misled them, which resulted in their refraining from submitting a MSD claim within the warranty period.
- [39] In *BE & SE*, the Tribunal was unable to determine whether Tarion misled the appellants because Tarion's Customer Service Call Centre notes were inconclusive as to the content of the MSD discussions. The Tribunal found that the appellants knew or ought to have known about the timelines for MSD claims process and it determined that they did not meet their onus to prove they had

been misled, the allegation of being misled being based on only one discussion with Tarion.

- [40] We find that *BE & SE* has little to reveal about the circumstances that might inform the nature of “other extraordinary circumstances” on which Tarion might consider in its discretion to extend a timeline. We are therefore not persuaded that the obligations of a homeowner to know and be aware of the warranty process negate the possibility that extraordinary circumstances might prevent adherence to the warranty timelines.
- [41] Tarion referred us to *Ottawa-Carleton Standard Condominium Corporation No. 961 v. Tarion Warranty Corporation*, 2021 CanLII 33609 (“OCSCC”), in which the Tribunal set out the four factors in *Manuel v. Registrar, Motor Vehicle Dealers Act, 2002*, 2012 ONSC 1492 (“*Manuel*”) that are commonly used in the exercise of determining whether to grant a timeline extension. They include:
1. The existence of a *bona fide* intention to appeal;
  2. The length of the delay;
  3. Prejudice to the other party; and
  4. The merits of the appeal.
- [42] These factors are not exhaustive but are commonly referred to in determining whether an extension to a filing deadline ought to be granted.
- [43] In *OCSCC*, the appellant had until August 2017 to request conciliation with respect to unrepaired deficiencies. In September 2019, the appellant requested that Tarion extend the deadline for requesting conciliation.
- [44] The Tribunal determined that, even if the appellant had proven extraordinary circumstances, it would not have exercised the discretion to extend the deadline because its analyses of the four factors in *Manuel* concluded that the appellant provided no reasons for the delay, that a two-year delay was unreasonable, and not every claim with merit would result in an indefinite extension of the deadline.
- [45] We are not bound by the Tribunal’s decision in *OCSCC*. We find it is not persuasive because it arose out of a request by the appellants to extend a deadline for requesting conciliation. We find this differs from the case before us because it involves extending a statutory timeline for requesting conciliation, rather than extending the timeline for the submission of a claim form and therefore have placed less reliance on this decision.

- [46] What *OCSCC* does demonstrate, however; is that the extraordinary circumstances presented by the appellant did not reach a threshold sufficient to merit an extension. The Tribunal pointed to the fact that the appellant knew of the conciliation deadline, it engaged counsel to assist with the warranty process, and it was unable to provide a reasonable explanation for the two-year delay in requesting conciliation.
- [47] In the aggregate, the case law referred to us paint a reasonable measure of what might characterize “extraordinary circumstances”, stressing that, as in *10249 v Tarion*, the circumstances should be assessed in context with the particular facts of the case and be consistent with the remedial consumer protection nature of this legislation. The Tribunal has found circumstances sufficiently compelling to extend a timeline when communications between the homeowner and Tarion broke down and resulted in barriers to access, when information was confusing or inconsistent, and when absences and other factors delayed the receipt of documents that were the subject of the timeline in question.
- [48] By contrast, circumstances were not sufficiently compelling to order an extension when a long delay went unexplained by an appellant, and when the facts of the case demonstrated that the homeowner was well aware or ought to have been aware of the deadline.
- [49] The examples in *OCSCC* and *10249 v Tarion* provide guidance in considering whether the appellant in the case before us encountered extraordinary circumstances which resulted in her missing the time limit of the MSD claim period.
- [50] To succeed in her appeal, the appellant must establish on a balance of probabilities that the “extraordinary circumstances” she was confronted by merit an extension of the timeline to submit the MSD claim.
- [51] The appellant submits that the “extraordinary circumstances” that warranted extending the timeline were:
1. that, the claims process with Tarion neglected to inform her of the MSD form filing requirements and timeline and she was misled and misdirected by Tarion throughout; and
  2. that, in the several months just before the 7-year warranty period ended, she:
    - a) contracted COVID-19;

- b) had to tend to her father's palliative care and subsequent passing; and
- c) experienced significant debilitating medical conditions thereafter.

*Communications Between the Homeowner and Tarion*

- [52] The appellant submits that she was misled and misdirected by Tarion which ultimately discouraged her from pursuing an extension for the filing of her MSD form. She submits that confusion and misinformation regarding the filing of her MSD claim is an extraordinary circumstance that warrants an extension.
- [53] The appellant testified that between the date of possession and the end of the 7-year MSD warranty period, she actively participated in the warranty process of the home by reviewing the pre-delivery ("PDI") form submitted by the builder and filing both a 30-day and a Year-end statutory claim form for observed defects and deficiencies.
- [54] Between the date of possession (December 2013) and mid-June 2015, the appellant pursued, with the builder and Tarion, a solution for discolouration and streaks that were appearing on the exterior fibre cement siding called Hardie board. The same defect was occurring on her neighbours' siding. The defect was reported in the 30-Day and Year-End form. In May 2015, the appellant sought conciliation for the defect but ultimately signed a Vendor/Builder and Owner Agreement which gave the builder until August 31, 2015 to remedy the siding streaks. As a result, the appellant agreed to cancel the conciliation inspection scheduled for July 13, 2015.
- [55] Under cross-examination, the appellant stated that, although she signed the extension document with the builder on June 8, 2015, she did not understand what the conciliation process was and that she did not realize that by cancelling the conciliation, the outstanding warranty claim items in the Year-End claim would be deemed withdrawn.
- [56] The appellant testified that in January 2021, as she recovered from COVID-19 and the death of her father, she contacted Tarion regarding the exterior siding issue in her home. The streak and discolouration had resolved but the siding material was now showing signs of deteriorating.
- [57] The appellant testified that she spoke to Justin Hobin, a Tarion representative, on January 20, 2021, who advised that the warranty appeared to have expired on December 3, 2020. The Salesforce (Tarion customer database) call-log notes

reveal only that the appellant called and that she was advised that the warranty had expired.

- [58] The appellant submits that if Mr. Hobin had advised her to file the MSD form in January, one month after the end of the filing deadline, she would have done so, and Tarion would then have been required to address the MSD claim and consider whether extraordinary circumstances merited an extension of the timeline.
- [59] The appellant testified that Mr. Hobin failed to provide a more fulsome explanation of the possible remedies available to her and as a result, she felt there was nothing more that could be done.
- [60] On March 29, 2021, the appellant contacted Peter Shahren, a technical desk supervisor with Tarion, who had served as the warranty service representative for the appellant up to 2015. Mr. Shahren testified that he initially advised the appellant that she was still in the MSD warranty period. Upon realizing his error, he emailed back a few minutes later to advise that the warranty filing period had passed and that the appellant was “not eligible to submit any further Tarion warranty forms.”
- [61] Under cross-examination, Mr. Shahren testified that he did not advise the appellant to submit the MSD form or to act with any urgency in the matter. Mr. Shahren did not appear to consider grounds for an extension or entertain any inquiries of the circumstances which might have been involved in the appellant missing the MSD filing deadline, even though the appellant advised Mr. Shahren in the email of March 29, 2021, that she had experienced COVID-19 and asked to be given the name of a supervisor to discuss the matter further.
- [62] Within the email of March 29, 2021, the appellant also advised Mr. Shahren that the siding was warping and disintegrating and the appellant was concerned that the panels would begin to fall off the building. During cross-examination, Mr. Shahren testified that, at that time, he did not believe that the MSD claim form could be submitted online after the warranty claim period had expired.
- [63] The appellant testified that, if Mr. Shahren had advised her to submit the MSD form (in March 2021), then Tarion would have been required to accept and respond to the MSD claim. The appellant testified that the actions of Mr. Shahren dissuaded her from filing the MSD claim form and, she surmises, that they were intended to discourage the appellant from filing the form.
- [64] The appellant testified that Mr. Shahren advised there was no warranty representative for her file to file a claim with. Mr. Shahren’s assistance was

limited to advising her to contact Customer Service.

- [65] Mr. Shahen testified that, at the time, he did not know that a MSD claim form could be submitted after the deadline, but that he has since become aware that it is possible to submit such a claim form after the deadline. As a result of Mr. Shahen's responses, the appellant felt there was nothing further that could be done.
- [66] After abandoning attempts to file a claim with Tarion after the March 29, 2021 exchange with Mr. Shahen, the appellant continued to pursue solutions for what appeared to be defective siding. She contacted her home insurer on March 4, 2024 who retained Belfor Property Restoration to assess the siding issue. Belfor determined that the streaking was on the red Hardie board siding and that the panels had not been properly installed and, further, that there was a risk of the panels falling off the building.
- [67] On October 1, 2024, the appellant spoke with the New Home Ombudsman, Tom Barber, and the email entered into evidence indicates that the appellant advised Mr. Barber of the ongoing siding issue and that the situation appeared to be worsening. On December 19, 2025, Mr. Barber confirmed their conversation of October and responded that it appeared the warranty period had passed, but that Tarion may be able to apply discretion.
- [68] On May 15, 2025, Ashley Maxwell, the Tarion representative who assists homeowners with mediations, texted the appellant acknowledging the appellant's interest in mediation. The appellant outlined the issues for Ms. Maxwell and advised that she was in receipt of another engineering report completed in January 2025 that highlighted the siding issues for 18 homes in the same development as the appellant's home. Ms. Maxwell reviewed the appellant's file and advised that the conciliation inspection had been cancelled and therefore, a Warranty Assessment Report had not been issued. In the absence of this report, Ms. Maxwell advised that mediation was not an option, however, she advised the appellant that she could request a decision letter from Tarion and then appeal the dispute to this Tribunal.
- [69] Ms. Maxwell then referred the appellant to Bonnie Douglas, Manager of Customer Service, at Tarion. On July 10, 2025, the appellant received an email from Fabrizio Iacono, Supervisor, Early Intervention, at Tarion, advising that the siding concerns were considered a new item, however; all warranties on her home had since expired. In his response to the appellant, Mr. Iacono attached a Major Structural Defect form and recommended that, once the appellant completed and submitted it, and was thereafter issued a decision letter from Tarion, she could appeal the decision letter to the Tribunal. We note that this

was the first occasion after the end of the warranty period in December 2020, that the appellant was advised to file a MSD claim form.

[70] On July 22, 2025, Ms. Douglas texted the appellant and advised that claim form submission timelines had been extended during COVID-19, from March 2020 to January 2021, but that the Salesforce records indicate the appellant did not follow up with Customer Service as she was advised to do, in order to request an extension. Ms. Douglas states in her email that a conversation with Customer Service was the appellant's opportunity to ask for consideration of her late form submission.

[71] Kiwana Scott, Director of Customer Service at Tarion, testified that in cases like the appellant's, when the warranty period has expired, they would offer to connect the owner with the builder to see if the defect could be addressed in that way. She testified that the call logs give no indication that the appellant contacted Customer Service after the email to Mr. Shahan (March 29, 2021). To a question of why Tarion did not, at that time, exercise its discretion to extend the deadline, Ms. Scott testified that Tarion cannot extend the 7-year MSD deadline; that the Regulation prevents it from doing this. She testified that Tarion can extend deadlines for things like conciliation assessments and form submissions but not a MSD claim.

[72] Ms. Scott testified that the MSD claim form, that was eventually filed July 20, 2025, was denied because it was submitted beyond the December 14, 2020 MSD filing deadline. Under cross-examination, Ms. Scott confirmed that she had reviewed the call centre logs and interactions in Salesforce and confirmed that the records indicate the siding concerns were raised prior to July 2025. We take notice that this seems inconsistent with Mr. Iacono's response advising the appellant that the siding panel defect was a new issue.

[73] Ms. Scott also testified that the filing of claim forms had not been extended during COVID-19. We take notice that this is inconsistent with the information provided to the appellant by Ms. Douglas's text. When asked by appellant counsel why this might be, Ms. Scott advised that Ms. Douglas was new in her role at the time and had no experience with form submissions.

[74] To a question of why Ms. Scott did not allow discretion for a timeline extension in the appellant's case, she testified that the Regulation does not allow Tarion to extend the 7-Year warranty period. While the form could be submitted late, Ms. Scott advised it may not be accepted. Ms. Scott also testified that whether the appellant called Customer Service in March 2021 was irrelevant, since no extensions beyond the 7-year time limit are allowed.

*Information Confusing or Incomplete*

- [75] In pursuing a resolution to this dispute, the appellant filed an Access to Information Request (ATIP) for the correspondence records between her and Tarion between 2013 and present.
- [76] The appellant testified that the email of March 29, 2021 (1:55 p.m.) with Mr. Shahen was not among ATIP records she received in response. The appellant testified that she had retained her own copy of the email and expressed concern that it was omitted from the files in the ATIP response. The appellant submits the missing email suggests that the email was not entered into Salesforce. She submits that, considering the ATIP file did not include important email, it is more likely than not that Tarion's records also missed capturing the call she placed to Customer Service after the exchange with Mr. Shahen.
- [77] The appellant testified that she was not aware that a 7-Year Major Structural Defect claim form existed because she had never filed such a form for her previous homes. She testified that Tarion's MyHome portal sent reminders of approaching timeline due dates in relation to other forms (30-Day, Year-End), but no reminder was sent for the MSD form.
- [78] Tarion submits that the appellant should have known of the claims process because the appellant received the warranty information, registered with MyHome, and submitted the 30-Day form and Year-end form in a timely manner.
- [79] Tarion submits that the appellant did not reach out to Customer Service after her exchange with and as suggested by Mr. Shahen, because there was no record of an additional call to Customer Service until 2024.

*Legislative Timeline extensions for COVID-19*

- [80] We take notice that O. Reg 73/20 suspended all statutory limitation periods retroactively to March 16, 2020. The suspension ended on September 14, 2020 following O. Reg. 457/20, for a total suspension of 183 days.
- [81] The Court of Appeal identified a critical distinction in *Brady v. Waypoint Centre for Mental Health Care*, 2025 ONCA 722 (CanLII) between claims discoverable before the suspension commenced and those discoverable during the suspension. In cases where the limitation clock was already running when the suspension began, the clock was paused for 183 days. Upon resumption, on September 14, 2020, the clock restarted, i.e., each day after September 14, 2020 was counted in the applicable statutory timeline. The practical effect is that the start of any statutory time period landing between March 16, 2020 and

September 14, 2020 was extended by 183 days. This was the situation analyzed in *McAuley v. Canada Post Corporation*, 2021 ONSC 4528, where the court noted the suspension “extended any running limitation period by 183 days.”

- [82] While we find that the COVID-19 extension would have had no material impact on this issue before us, we find Tarion provided inconsistent information regarding whether the COVID-19 extensions applied to its warranty limitation and filing periods. Under cross-examination, Ms. Scott testified that no extensions were provided for the filing of claim forms during COVID-19. However, Bonnie Douglas advised the appellant that the form submission timelines had been paused during COVID-19. We accept that Ms. Douglas may have been unfamiliar due to her recent assignment to the role, but it is reasonable to expect that homeowners attempting to navigate the warranty process could be confused by contradictory information.

*Inconsistent messages create confusion and become barriers to accessing the warranty process*

- [83] We find that there has been inconsistency in the information provided to the appellant, inconsistency in knowledge and understanding conveyed by Tarion representatives regarding the claims process, and a lack of information provided to the appellant regarding the basis for getting an extension to the MSD claim filing timeline.
- [84] For example, Mr. Shahan stated the appellant was not eligible to submit the MSD claim form after the December 14, 2020 deadline, a position that was reiterated by Mr. Hobin and Ms. Scott, yet nearly 5 years later, the appellant learned that she could file a MSD claim form and when it was denied, Tarion would issue a decision letter on which she could pursue an appeal to this Tribunal.
- [85] Ms. Scott advised that the MSD warranty had expired and no MSD claim could be made, however; under cross-examination, she confirmed that the appellant’s medical and family situation would have been factored into a decision regarding extraordinary circumstances for purposes of Tarion’s discretion under s. 5.10. Mr. Iacono stated that the siding was a new issue, yet Ms. Scott testified that after she reviewed the call logs, she determined the siding issue was not a new issue.
- [86] We find it concerning that the appellant’s call to Customer Service in March 2021 was not recorded within the Salesforce system. We have only the appellant’s testimony that she made that call, however; that the email of March 29, 2021 was also missing from the ATIP file suggests Tarion’s records may not

be complete.

- [87] We find that the inconsistent information provided to the appellant contributed to the confusion around her eligibility to file a MSD claim form and it establishes reasonable grounds for the extraordinary circumstances that resulted in her abandoning the MSD claim initiative in March 2021.
- [88] We find that Tarion neglected to consider the 183-day extension of timelines due to COVID-19, which was in effect up to September 14, 2020, one month prior to when the appellant left for Alberta to care for her father, and it failed to engage the appellant on the grounds by which she might pursue an extension of the timeline for her MSD claim form.
- [89] We accept that these kinds of inconsistencies can occur in communications to the public and stakeholders on subjects as detailed and complex as the warranties and warranty processes within the *Act* and Regulations. The communication of detailed and intricate warranty schemes will never be perfect, and it would be unreasonable to expect it to be. However, we find that s. 5.10 exists for these very reasons; to, in the face miscommunication or misunderstanding, allow reasoned consideration of the factors which may have led to a homeowner missing a statutory timeline. The legislature gave Tarion the tools to do just that, in s. 5.10.

### ***The appellant's father's Care, COVID-19 and medical conditions***

- [90] The appellant testified that her father, who lived in Calgary, had become palliative in September of 2020. The appellant testified that, in October 2020, she travelled to visit her ailing father and remained there until he passed away in mid-December. On December 16, 2020, the appellant attended Alberta Health Services where it was confirmed that she was suffering from pneumonia and a protracted cough. On December 17, 2020, the appellant was diagnosed with COVID-19. The following day, an ambulance was called to attend to the appellant as she was experiencing difficulty breathing.
- [91] The appellant testified that, thereafter, she experienced long COVID-19 symptoms for a significant time thereafter. She supported her claim by providing the clinical notes and records ("CNRs") of her family physician as well as the orthopaedic surgeon, respirologist, and ENT to whom the appellant was referred. Her condition persisted into 2023 during which she contracted COVID-19 on two additional occasions.
- [92] The appellant submits that the necessity of travel to Calgary to be with her father during his illness and passing, her contraction of COVID-19 and subsequent

long COVID-19 symptoms, and other medical conditions, should have been considered by Tarion as extraordinary circumstances.

- [93] Tarion did not provide submissions on whether the appellant's circumstances met the threshold of "extraordinary", because it, as noted above, considered the MSD claim period to have expired and the Regulation prevented it from considering an extension.
- [94] We agree with the appellant that Tarion should have considered the appellant's medical conditions. Kiwana Scott, Director of Customer Service at Tarion, testified that she had not reviewed the proof of the appellant's medical conditions until preparing for the hearing. We heard no evidence that any of the agents or warranty services representatives the appellant contacted at Tarion, including Justin Hobin, Peter Shahan, or Ashley Maxwell, considered or discussed with the appellant, the nature of her medical conditions or her father's illness and imminent passing.
- [95] We find the three-month absence of the appellant to attend to her father and his eventual passing in December, and her subsequent medical condition brought on by COVID-19, contribute to the extraordinary circumstances she was confronted by at the time the MSD claim timeline expired.
- [96] We find the appellant has demonstrated that there were other extraordinary circumstances involved in this MSD claim item.

***Should Tarion have exercised its discretion in s. 5.10?***

- [97] We find that the inconsistencies in communications in relation to the appellant's MSD claim as well as the medical conditions of the appellant's father and the appellant contribute to the extraordinary circumstances on which Tarion ought to have used its discretion to grant an extension.
- [98] We find Tarion ought to have exercised its discretion to grant an extension for the filing of the appellant's MSD claim form.
- [99] The appellant submits that Tarion ought to have exercised its discretion to extend the time for filing the MSD, pursuant to s. 5.10 (b)(ii) of the Regulation, because there were "other extraordinary circumstances" that warranted extending the timeline.
- [100] The appellant seeks Tarion's acceptance of her MSD claim despite being late-filed, so that it may proceed through the applicable warranty assessment process set out in the Act and the Regulations.

[101] The appellant referred us to *Oakwood Development Ltd. v. St-François Xavier*, 1985 CanLII 50 (SCC) (“*Oakwood*”), [1985] 2 SCR 164 and *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII) (“*Jackson*”) in support of its position that it is an error of law for the decision maker, in this case Tarion, not to exercise discretion when warranted. While *Oakwood* refers to an appeal from the Court of Appeal in Manitoba in 1985, we find that it is relevant because it finds that the decision maker must not only consider the factors within its statutory mandate, but also all the factors relevant to the proper fulfillment of its statutory decision-making function. In this case, the Supreme Court of Canada found that the Municipality had failed to use its discretion to consider all relevant factors.

[102] The appellant also relies upon *Jackson*, a decision where a former Mayor was found to be in contravention of regulations pertaining to election campaign finances and appealed the decision rendered by the City of Vaughan. The Court of Appeal found that discretionary decisions must be made with regard to what was contemplated by the legislation. The appellant points us to a section within the ruling and emphasizes that language is not an exact tool and that all it can do is give fair notice by delineating a zone or area of risk. We agree with the decision that when conduct falls along the boundaries, statutory language is not vague if a conclusion can be reached by reasoned analysis, and that analysis must give sufficient indication as to how they have been reached.

[103] Tarion referred us to *Rose v. Tarion Warranty Corporation*, 2026 CanLII 2272 (ON LAT) (“*Rose*”) which stated, at paragraph 23, that:

“The purpose of the *Act* and Regulations is to provide consumer protection (see, e.g., *375 Lakeshore Developments Inc. v. Tong*, 2021 ONSC 1820 at para. 97). I find that s. 5.10 of the Regulation is intended to provide Tarion with the flexibility to consider claims when filed by consumers who have legitimate reasons for being unable to file a claim form within the claim period. I find that sections 5.10 and 5.9 of the Regulation authorize Tarion to abridge or extend the time period under which a homeowner may submit or amend a year-end claim form.

[104] We are not bound by the Tribunal’s decision in *Rose*, but we find it relevant and are guided by it in this case because it combines the perspective of applying the consumer protection purposes of the *Act* and Regulation to a practical application of s. 5.10 when the circumstances warrant its use and discretion to extend a timeline.

[105] As noted in *10249 v. Tarion* above, the power to extend the time limit in s. 5.10 is a broad discretion that should be exercised in a manner consistent with the remedial consumer protection purposes of the legislation. Each determination

regarding whether an extension should be granted, based on extraordinary circumstances, is dependent on its own facts, which is a principle consistent with the discretionary nature of section 5.10.

[106] We find that the appellant has met her burden to establish, on a balance of probabilities, that Tarion ought to have exercised its discretion to extend the timeline for the appellant's MSD claim form.

## **CONCLUSION**

[107] Under s. 14(19) of the Act, the Tribunal may direct Tarion to take such action as the Tribunal considers Tarion ought to take in accordance with the Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of Tarion.

[108] As we have found that other extraordinary circumstances were involved with the appellant's claim item, that s. 5.10 is a broad discretion giving Tarion the flexibility to grant timeline extensions for late-filed claims for legitimate reasons, and that Tarion's discretion in s. 5.10 should be viewed in the context of the consumer protection purposes of the Act and Regulation, we direct that Tarion grant the appellant an extension to the MSD claim filing timeline.

## **ORDER**

[109] We order, pursuant to s. 14(19) of the Act, that Tarion accept the appellant's MSD claim and undertake the warranty claim process in respect of it, in accordance with Act and the Regulations.

***Released: April 13, 2026***

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**Bruce Stanton**  
Adjudicator

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**Dagmar Boettcher**  
Adjudicator