

Government enabled Tarion

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The Ontario New Home Warranties Plan Act is a consumer protection Act administered exclusively by Tarion Warranty Corporation to protect the rights of new home owners and regulate new home builders. Tarion, through the Ministry of Consumer Services, has empowered this company to enforce the Act. However, when Tarion is challenged by homeowners about warranties, Tarion apparently uses stalling tactics to wear down consumers so they drop their claims. When citizens appeal Tarion's decisions to deny their claims to the License Appeal Tribunal, Tarion throws skilled civil litigation lawyers at them to defeat their appeals. Often then new homeowners are left defenceless to these high-priced litigation lawyers, end up losing their appeals and give up.

Essentially similar to ORNG, Tarion is at an arm's length from government. There is no genuine oversight. Sadly government officials don't appear to be that interested in helping the new homeowner by basically sloughing off apparently legitimate complaints about Tarion. In turn, Tarion has used this lack of genuine oversight and accountability to its advantage extremely well despite a number of complaints over the years from homeowners and a warning from Andre Marin, Ontario Ombudsman in 2008 Lack of Building Clarity report. Sadly, Marin did not have complete oversight and could not delve into a review of Tarion's warranty program and more particularly how they respond to homeowners claims, including the use of a Values Test. This month a W5 investigation into faulty heating, ventilation and air conditioning (HVAC) and Tarion's responses to these claims against the warranty was an issue. Tarion often takes an adversarial role with regards to homeowners warranty claims.

A consumer protection law designed to police the new home building industry and enforced by a private corporation with huge ties to the building industry itself and no genuine oversight by the government is an opportunity for financial disaster to occur, strictly at the expense of the new homeowner. Having no genuine oversight makes no sense in the era of supposed accountability and transparency. Problems develop and what's considerably worse, can continue to fester, remain unresolved, unreported and move toward becoming fraudulent.

This ability to operate exclusively with no genuine oversight from the government has enabled Tarion to basically set up its own litigation system that appears to be fraudulent.

Fraud is defined as a false representation of a matter of fact—whether by words or by conduct, by false and misleading allegations or by concealment of what should have been. Tarion's litigation lawyers had been using what has been referred to as the Shuman Values Test until Howard Bogach, Tarion's own CEO, personally intervened in the litigation and put a stop to it by writing, "it is not sufficient to examine only the amount of money being contributed by the homeowner" and "we have also requested our external counsel to stop referring to the existence of a "Shuman Test" or a "values test."

This has been an idiotic numerical fallacious argument originally concocted by Tarion's litigation lawyers to essentially entrap the new homeowner as the "builder" as defined in the Act based on the relative percentage of money contributed to the construction of a new home. Unfortunately both the government panel and subsequent Divisional Court panel that heard this initially concocted argument agreed setting an absurd precedence in law and therefore setting it up as a legal test in other cases where new homeowners innocently contributed any work to the construction of their homes.

Bogach's position regarding the Values Test is, "we agree that focussing on the dollar value alone is not a correct test. I agree that such an approach can be misleading as to the true substance of the homeowner's contribution. It is the substance of what is contributed by the homeowners that matters, not the numeric value of the contribution. We have advised our external counsel to take a substantive approach." Fine, sounds wonderful until one realizes that for many years prior to this statement, many new homeowners, beginning with Dr. Earl Shuman, have lost warranty claims due to a fallacious mathematical trickery scheme. They should be receiving restitution because they lost their claims on a bogus point of contention, essentially a fraudulent counter-claim.

Essentially, it appears as if Tarion's litigation lawyers were successful in changing the definition of "builder" within an Act on the fly. A new homeowner warranty protection plan should be seen as valuable insurance for the homeowner not as the insurer for the hired builder. As such, Tarion should be completely overhauled with an upgraded and significantly better oversight mechanism imposed by governments that apparently and rather sadly prefer to turn a blind eye to injustices.