

# Christie Blatchford: Homeowner's Kafka-esque legal battle with builder and warranty agency

**CHRISTIE BLATCHFORD** | September 24, 2015 8:20 PM ET, National Post



Christie Blatchford/National Post Earl Shuman's pool table with some of the paperwork from his 27 year fight over his house.

It was never about the money for him, though of course in a larger sense – that is, for the corporation and builders he's trying to hold to account and for the lawyers and judges who have been involved in the case over the years – it often was, or seemed to be.

So Dr. Earl Shuman won't say how much his 27-year battle has cost him. He's too embarrassed and too proud, both.

But long ago and far away, when he was a newly minted dentist busy establishing himself in eastern Ontario, he decided to buy a house — his first house and, as it turns out, his only one.

Until that point, he'd lived in bachelor apartments and even a shed. He was intending to buy a resale house, but spotted a parcel of land, out in the country north of Cobourg, Ont., with expansive lovely views, and realized he'd have to find himself a builder.

"I was 38 years old," he said wonderingly several times in a recent interview at his home, as if he can't quite believe it.

No wonder: Shuman is 64 now, and he's spent all those intervening years fighting Tarion, the private non-profit agency that administers the Ontario New Home Warranties Plan Act. In plain English, it's the outfit that is ostensibly there, a creation of the Ontario government, to protect new home buyers but which is often criticized for instead being protective of new home builders.



Brett Beadle/Postmedia News Tarion is often criticized for being protective of new home builders rather than the buyers, as is its mandate.

To put what's in all those boxes that now cover the huge pool table in the basement level of his home (and all the lawyers' banker's boxes behind them, and the walls of binders and files wherever you look) at its simplest, Shuman's house was built by a former local builder, Donald Linton Custom Homes Ltd., which wasn't registered with Tarion and which was therefore then building illegally in Ontario.

So when, belatedly, Shuman learned that Tarion existed, and called to see if it could help with what was a long list of deficiencies, he was told he was out of luck.

He persevered, finally convincing Tarion to send an inspector. He was then informed by letter on Dec. 16, 1991, that because he'd done some work on the house himself – he'd had to, because by then the project was way over budget and time – Tarion had decided that he, dentist Shuman, was the builder and that the builder was merely a “project manager” and that therefore the house wasn't covered.

Sandwiched around that letter, meantime, Tarion twice wrote Linton Custom Homes identifying Don Linton as an illegal builder, sternly demanding he register with the program and warning him that he could face fines up to \$100,000.

And, for a brief one-year period ending in March of 1994, Linton Custom Homes was actually registered with Tarion and Shuman even got a warranty certificate for his house.

And in the midst of that year, in July of 1993, Tarion then switched gears and told Shuman that his claims were being denied because he was making them too late.



Postmedia Tarion CEO and president, Howard Bogach

Shuman appealed the decision to what was then called the Commercial Registration Appeal Tribunal, one of several such boards now amalgamated under the Licence Appeal Tribunal. This upheld the original claim that the builder wasn't a builder and that Shuman the dentist was the builder.

Thus was born the "Shuman test" or "values" test, which held that if homeowners did some percentage of the work on their homes themselves, they'd have their claims denied. And other homeowners were similarly denied, though Tarion's CEO and president, Howard Bogach, has since apologized to Shuman, agreed the "Shuman test" is bogus and promised it won't be used any more by Tarion lawyers.

Shuman appealed the tribunal decision – even to the Supreme Court of Canada, which refused him leave to appeal – but lost at every turn. He also sued Tarion, but the case was dismissed and he was ordered to pay \$75,000, which he refused to pay and spent a week in jail for his trouble.

In recent years, convinced that the Shuman test, which he calls the Shuman fraud, was wrongly used to disqualify homeowners from fixes under their warranties and that such action was criminal, he switched gears. He's been trying to convince various police forces to investigate and lay charges.

He's not angry with his former builder. It's not even about the house, anymore, which still has its long green views.

Shuman makes an analogy to sports, where, he said, as a young basketball player, “I never got mad at the person fouling me, but at the ref” – in other words, at the authority who failed to do the right thing.

Why did Tarion, which is supposed to police illegal builders, never prosecute the one who operated illegally for a decade and built, among others, Shuman’s house? Why did a series of lawyers and judges sanction the now-disgraced “Shuman test” which, against all common sense, deemed the dentist the builder? Why were there no court reporters for at least a couple of the court proceedings? (In one instance, Shuman even hired his own, but she wasn’t allowed to stay; his lawyer later rued the increasingly common practice. The lack of such a record makes appeals more difficult.)

“It’s not about my case,” he said fiercely, “but the chaos in the legislation. Lawyers’ talk has created this mess. It’s all sophistry, BS.”

His odyssey really has been Kafka-esque, particularly Kafka’s short story called Before the Law, about a man from the country who “prays for admittance to the Law.”

Its gate stands open, but there’s a doorkeeper, and he won’t admit the man from the country, so he stays there, waiting for the OK, until he dies.

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