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The two-car garage that wasn't

ONHWP's argument in complaint case defies common sense

Today's trick question is "How many cars fit into a two-door garage?"

The answer, it seems, depends who you are asking the Ontario New Home Warranty Program, or everybody else.

When I went to law school and we were faced with a question like this, we learned that for the last 150 years, Canadian and British courts used the "reasonable man" test. To determine what a reasonable person would think or do in a particular case, British judges invented the legal fiction of the "man on the Clapham omnibus," named after a London neighbourhood. In a 1987 decision of the Supreme Court of Canada, the term was updated to a "career woman on the Voyager bus."

If I asked any number of these fictitious but typical people how many cars fit in a garage with two garage doors, I have no doubt that they would all answer "two" unless, of course, they worked for, or with, the Ontario New Home Warranty Program. In that case, the answer would be "one."

When Ren and Evelyn Eboras went into a builder's sales office in Maple to buy their dreamhome, they were shown plans and drawings with a garage having two doors. Between the doors is a pillar, which supports some of the weight of the second storey of the house above it.

The house was subsequently built with two bays in the garage, each having a separate door. The right-side opening is 88 inches wide and the left-side opening is 90 inches wide. If the centre pillar were removed, the opening would be 201 inches across.

The Eboras own a Ford Aerostar van and a Honda Accord. The van can drive into the left side of the garage, and the Accord fits into the right side, but it is a tight fit and the car has been scratched repeatedly.

Inside the house is a curved staircase. To fit the staircase, the builder took about two feet from the interior of the garage. As a result, if a car is parked on the right side of the garage, it has to be turned to the left and into the parking space of the vehicle on the left side.

When the Eboras filed a complaint with the Ontario New Home Warranty Program, it was turned down, so they appealed to the licence appeal tribunal, which has the authority to reconsider the ONHWP's decision.

A hearing was held in March, 2001, before David J. Hunt, vice-chair of the tribunal. After Ren Eboras presented his case, two witnesses testified on behalf of the builder and ONHWP. Warren Northcott, a warranty representative for ONHWP, stated that he inspected the home but found no breach of warranty. The agreement of purchase and sale allowed for changes in dimensions, said Northcott.

When asked whether it is normally intended to put two cars into a two-door garage, Northcott told the tribunal that "it is a matter of personal preference."

The director of quality control for the builder was asked if two garage doors meant that two vehicles should be able to park in the garage. He said it did not, and could mean that "one side would be used for something else, such as a workshop," though the builder's plans labelled the space "garage."

Apparently, neither Northcott or Szinegh is a frequent traveller on the Clapham omnibus.

In the tribunal's decision, David J. Hunt noted that the garage was not referred to in the plans as a "two-car" garage but simply as a "garage." It functions as a garage and as a result, Hunt said, there was no breach of warranty.

Hunt, apparently, does not visit Clapham frequently either.

Last week I spoke to Rene Eboras about his fight with ONHWP. "I feel like I was cheated," he said. "ONHWP does not protect the customer, it protects the builder."

If ever there was a case demonstrating the fact that ONHWP fails to protect the public and is builder-biased, this one is it.

It s time for the Ontario government to scrap ONHWP and replace it with a plan that will do more than provide lip-service to consumer protection.

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