

TALES FROM THE TRENCHES™

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SELLERS, ARE YOU GUARANTEEING TITLE?

Wow, a recent bombshell of legal case from the Ontario Court of Appeal is causing huge ripples in the Canadian real estate world. In the Courts and in the world of precedent there is a pecking order. The Supreme Court of Canada is the highest court in the land. The Ontario Court of Appeal is the court of last resort in Ontario. Ontario is Canada's largest common law jurisdiction. Therefore, any decision from the Ontario Court of Appeal is extremely influential. It recently ruled that marketability of title and marketability of property may be linked.

The case in question was *MacDonald versus Chicago Title Insurance Company* of Canada, which you can read in full at the following link: <http://canlii.ca/t/gmc53>. For a clear and cogent summary—including why this matters to real estate buyers and sellers across Canada—check out an article called “The New Marketability of Title Paradigm after MacDonald” written by Jeffrey W. Lem and Megan J. Lem for building.ca: <https://www.building.ca/features/new-marketability-title-paradigm-macdonald/>.

The key piece of information, according to Lem and Lem, is that, “The Supreme Court affirms that good and marketable title now includes freedom from latent defects.”

Lessons Learned:

1. Sellers: There are many forms of contract. Ask your lawyer if your sale contract guarantees marketability of title.
2. Sellers: Beef up or amend your sale contract particularly in the Warranties section to make it crystal clear you are ***not*** providing a guarantee that there are no latent defects.
3. Buyers: Title insurance is tricky at the best of times. Always get a thorough home inspection.
4. Buyers: Always ask the Seller if there are any issues/defects at all that might affect your buying decision.

**FOR ALL YOUR ALBERTA REAL ESTATE LEGAL NEEDS,
CONTACT BARRY MCGUIRE TODAY!**

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