

Newsletter



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Avocats • Lawyers

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What are the obligations of a pre-purchase inspector?

While for some the pre-purchase inspection is essential when purchasing a home or building, others feel it is of little use considering the various limitations to the inspector's mandate. Let us first review some basic principles, in light of a recent judicial decision.

The pre-purchase inspector: A professional?

Although hiring an inspector is not mandatory, a buyer must act with prudence and diligence before buying a property. In order to satisfy this obligation, the buyer must perform a careful visual inspection of the building in order to identify any sign of defects. In such cases, an investigation becomes necessary. The evaluation of the building by a pre-purchase inspector thus allows the buyer to prove that they satisfied their obligations of prudence and diligence.

Surprisingly the building inspector profession is not subject to any regulated training. The inspector is therefore not governed by the *Professional Code*. This means that anyone can claim to be a qualified inspector, regardless of their training or experience. For this reason, buyers should choose an inspector who is both covered by error and omission

insurance and a member in good standing of a relevant professional order.

In Québec, architects, professional technologists and building engineers offer this service. However, it is not an act reserved for these professionals because anyone with construction knowledge can give themselves the title of building inspector and carry out pre-purchase inspections for customers without being a member of these orders.

In attempt to fill this legal void, two Québec organizations, namely the Québec Association of Building Inspectors and the Corporation of Building Inspectors of the Province of Québec, adopted standards of practice. These standards, which can serve as guidelines for the Court, state that the pre-purchase inspection is essentially an inspection of the visible and easily accessible components of the building with the goal of identifying the major apparent defects



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that may affect the building or diminish its use or value. In this regard, the liability for hidden defects is not the liability of the inspector but the seller under the legal guarantee provided for in the *Civil Code of Québec*. There is thus no legal link between the pre-purchase inspector responsible for identifying visible defects and the seller, guarantor of the hidden defects.

However, holding both the seller and the inspector liable *in solidum* remains possible in the event that the pre-purchase inspector did not spot a hidden defect when there were visible signs. There is an abundance of case law dealing with the liability of the pre-purchase inspector. The most recent decision was rendered by Honorable Justice Gérard Dugré J.C.S. in *9125-5216 Québec inc. v. Sogevem Associés experts conseils Ltd.*, 2018 QCCS 369.

The consequences of a hastened inspection

In this case, the plaintiffs hired a firm specialized in building engineering and inspection for a fee of \$2,400 to inspect a 194-unit building as well as an underground garage. The report submitted by the firm listed both the short-term and long-term works that needed to be done, which would cost between \$310,000 and \$423,000. Despite these findings, the plaintiffs purchased the property for \$8.2 million. More than three years later, the plaintiffs received a notice of violation from the City of Gatineau because bricks were detaching from the building. The plaintiffs decided to get the building inspected a second time and the inspector concluded that the necessary repairs would cost \$3,745,000. The plaintiffs therefore believed that they were misled by the first inspector and would never have bought the building if the first report had not

been misleading. They therefore instituted proceedings against the firm responsible for the pre-purchase inspection and claimed more than four million dollars in damages.

From the outset, the Court insists that the question requires an examination of the contract concluded between the parties. The defendant firm would only be liable if they failed to comply with the obligations they assumed. The Court reiterates that it is necessary to consider the date of the inspection and the report in order to determine the inspector's liability. The Court also establishes that just because two building inspectors differ in opinion does not prove that one of them committed a fault. The question remains whether the defendant's agent acted as a reasonable and prudent inspector would if placed in the same circumstances. It is important in this respect to recognize that the fact that the inspector is an engineer does not transform a visual inspection into an in-depth expertise.

After analyzing the evidence, the Court concluded that the defendant did not commit a fault considering the limits of the mandate given to the pre-purchase inspector. The Court also notes that the repairs that the plaintiffs were required to perform on the building were actually due to the lack of maintenance, deterioration, depreciation and the normal disrepair of the building, having been built in 1972, as well as some of the owner's own choices.

The Court finds that an inspected building's cost of repair is not a direct damage resulting from the acts or omissions of the inspector, but rather is intrinsic to the building and its state. When a buyer of a building receives an erroneous inspection report, they may suffer various damages, namely:



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1. Losing the chance to negotiate a lower purchase price with the seller;
 2. Not being able to pay a lower price to buy the building;
 3. Having bought a building that they would not have bought if they knew the repairs that would need to be done;

In the case at hand, the Court determined that the inspector's conduct did not cause any injury to the plaintiffs. The Court was not convinced by the plaintiff's argument that they would not have bought the house had the report had a more pessimistic outcome. The Court also points out that the plaintiffs did not rely on the report to know the condition of the building but rather to

obtain financing. Moreover, they did not follow any of the recommendations therein. It therefore is difficult in this context to argue that the report misled the plaintiffs.

What can we then take away from this case? The pre-purchase inspection is certainly a precaution that any building buyer should take. However, as seen in the aforementioned case, buyers cannot assume that they will know everything about the state of a building after only one inspection. It is important to be aware of the mandate given to the inspector and to take into consideration a combination of technical and financial factors when making such an investment.

To know more on the liability of pre-purchase inspectors, do not hesitate to contact the author, or her colleague Patrick Henry (514 393-4030, phenry@rsslex.com), who successfully represented the defendant firm in the case under discussion.

