



**Jacques Robert  
Real News  
February 2012**

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Dear real estate professionals,

We thank those that provided us with some issues/questions that they wanted to see addressed in our next newsletter. In this issue we discuss organ and tissue donations as well as stigmatized properties.

Did you know that we post all of our newsletters online? Yes, they are available on our website by clicking [here](#).

We hope that in each upcoming newsletter we will continue to address issues which you find relevant and provide you with useful information and tools to continue providing the best service to our clients.

We also include a list of this month's community events for you to share with your new clients moving to Ottawa and interested in getting involved in the community.

We thank you for your ongoing support!

Sincerely,

*Jacques & Sarah*

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## Stigmatized Properties

*By Sarah R. Morgan & Jacques Robert*

*What if you are acting for an individual who is selling a house in which a double homicide had occurred, do you have an obligation to disclose this fact to the buyer or buyer's agent?*

*What if the house is haunted by ghosts, do you have an obligation to disclose?*

Wikipedia defines stigmatized property as a "property which buyers or tenants may shun for reasons that are unrelated to its physical condition or features. These can include murder, suicide or even AIDS, in addition to a belief that a house may be haunted."

The Ontario Superior Court of Justice addressed the issue of a stigmatized property in the 2011 decision [Dennis v. Gray](#).

### The Facts

In this case, the Plaintiffs were husband and wife and were also the parents of two young children. They purchased a property in Bracebridge with the intention of using it as their residence. Upon purchasing the property, the Plaintiffs became aware that it was common knowledge that a person convicted under the child pornography provisions of the Criminal Code lived across the street from them.

Had the Plaintiffs known of this fact, they would not have purchased the property. As such, the Plaintiffs brought an action against the Sellers and their agent for failing to disclose this fact, which they were aware. The Plaintiffs argued in part that the fact was a latent defect such that it should have been disclosed to them.

### The Arguments

The Defendants brought a motion to dismiss the Plaintiffs claim arguing that "it is plain and obvious that the fact that the person lives across the street was convicted of child pornography (1) is not a latent defect because it was common knowledge in the neighborhood, and could have been discovered on reasonable inquiry, and (2) in any event, the plaintiffs have not pleaded that such fact creates a risk of physical harm or danger to the inhabitants."

The Plaintiffs in turn, argued that the courts seem to be broadening the doctrine of latent defects as evidenced by *Swayze v. Robertson*. In *Swayze*, the court held that a latent defect is one which is not readily apparent on a routine inspection. The Plaintiffs argued that in their case, similarly to *Swayze*, the criminal record of the neighbour could not be ascertained from a routine inspection. The plaintiffs further highlighted that the intended use of the property - as a home for the family which included young children- was known to the defendants and that the particular criminal record of the neighbour was a defect given the intended use.

Also, the Plaintiffs advanced that their case is similar to *Sevidal v. Chopra* in which liability was found in relation to risk not on the property itself, and not a structural problem. Similarly, in this case, the risk (the neighbour) "is not on the property but presents a potential danger to the children of the purchasers of the property."

## The Decision

The Defendants' motion was pursuant to Rule 21.01(1)(b) of the Rules of Civil Procedure which states that "a party may move before a judge, . . . (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence."

While the court recognized that the plaintiffs' claim is novel and raised policy issues (including the protection of children), the court concluded that it was not plain and obvious that the plaintiffs' action was certain to fail and thus, the court dismissed the defendants' motion.

## The Moral

This case will likely never proceed to trial, as such uncertainty will continue to surround the subject of stigmatized properties in Ontario. In wake of this decision, agents and sellers should err on the side of caution when dealing with stigmatized properties and disclose such information especially when there is a potential danger posed to the potential purchasers.

*Please note that the above is not an exhaustive list of considerations when dealing with stigmatized properties. If you have any questions regarding the above or any other matter, please do not hesitate to contact us.*

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## The Gift of Life

*By Sarah R. Morgan & Jacques Robert*

Our office recently became aware that only 20% of Ontarians have registered their consent to be an organ and tissue donor. Given the importance of this issue we decided to raise awareness about the Ontario Ministry of Health and Long-Term Care's online database for organ and tissue donations as well as the Trillium Gift of Life Network.

The Trillium Gift of Life Network (TGLN) is an agency that is "committed to creating a culture that enables every Ontarian to make an informed decision about organ and tissue donation and to support healthcare professionals in implementing those decisions." As such, [TGLN's website](#) contains a plethora of valuable information relating to organ and tissue donations.

The Ontario Ministry of Health and Long-Term Care has created an online registry where individuals can register their consent to donate organs and tissues.

When you register your consent online, information about your donation decision will be available and accessible should it ever be required as its recorded in a Ministry of Health and Long-Term Care database. In the event of your death, your donation decision will be disclosed for the purpose of sharing this information with your family so that they can honor your wishes.

*"But I've already signed a donor card, why should I do this as well?"*

A signed donor card is not recorded with the Ministry of Health and Long-Term Care and thus, may not be available when needed.

To register you must be 16 years of age or older and have a valid Ontario Health Number.

[To register, click here.](#)

**IF YOU WOULD LIKE TO RECEIVE OUR NEWSLETTER PLEASE EMAIL: [smorgan@jacquesrobert.com](mailto:smorgan@jacquesrobert.com)**

**Disclaimer:** The foregoing articles are for information purposes and do not constitute legal advice.

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## Interested in attending an informational seminar?

Both Jacques and Sarah are teachers at heart and as such, they offer various seminars on real estate, wills and estates matters free of charge to real estate professionals.

If your office is interested in receiving an informational seminar, please [contact us](#) to schedule a date and time.

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## Client Quarterly Newsletter

**Next Issue:** March 2012

If you would like to automatically receive our client newsletter, please send us an [email](#).

To access previous issues, click [here](#).

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## Community Events

**A list of community events taking place in Ottawa this February:**

- **Preschool playdates (misc):** various dates in February @ 2100 Cabot Street, Billings Estate National Historic Site (Billings Bridge) For more information click [here](#).
- **21st Annual Stew Cook-Off:** February 3, 2012 @ ByWard Market (Downtown). For more information click [here](#).
- **Ottawa Winterlude:** February 3-20, 2012 @ Various locations (Downtown). For more information click [here](#).
- **Fete Frisson** February 11, 2012 from 9-1pm @ Shenkman Art Centre. For more information click [here](#).
- **4th Annual Grand Desserts Party: A Little Black Dress Affair:** February 16-17, 2012 from 7-10pm @ Ashbury College (362 Mariposa Avenue) to benefit the Canadian Cancer Society. For more information click [here](#).
- **The 2012 Ottawa Boat and Sportmen's Show:** February 23-26, 2012 @ CE Centre (4899 Uplands Drive, Hunt Club). For more information click [here](#).
- **New Temporary Exhibition: From the Farm to the Freeway:** Biocomposite Plastics: December 8, 2011 until June 10, 2012 Tuesday to Sunday until 5pm @ Canada Science and Technology Museum. For more information click [here](#).
- **10 ans: Gatineau se raconte:** October 4, 2011 until August 24, 2012 various times @ Outaouais Archives Centre, 855 de la Gappe Blvd, Gatineau. For more information click [here](#).

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## About Our Law Firm

With the dynamic vision of its key player, Jacques Robert, our firm has grown to be one of the largest real estate law firms in the Ottawa area. To meet the changing face of Real Estate Law we are continually upgrading our systems and competitively adjusting our pricing structures.

Our highly trained legal team, consisting of Sarah Morgan (associate lawyer), Adriana Caruso (law clerk), Melanie Soubliere (law clerk), Katie Moore (law clerk), Eva Mooers (office administrator/receptionist), and Milva Caruso (office manager and law clerk) are all well versed in the areas of real estate law, wills and estates.

We offer a fully bilingual service to our clientele - nos services sont également disponibles en français.

Our firm is on the recommended rosters for the Department of National Defence, RCMP as well as many corporate relocation firms. We are on the recommended list for all of the major builders in the region.

We have three (3) locations for our clients signing convenience: the East, West, and South parts of the city. Our Central Administration is conducted at the East office which is located in Orléans just minutes from the Queensway, the main freeway through Ottawa from West to East. We are open daily from 8:30 am until 5:00 pm.

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Visit our website at [www.jacquesrobert.com](http://www.jacquesrobert.com) for more information.



## Disclaimer

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In all cases, contact your legal professional immediately for any advice on any matter referenced in this document before making any decision whatsoever.

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