

The Québec Court of Appeal clarifies the interaction between latent defects claims and any applicable insurance coverage

Reported case	Johnston v. Chubb Insurance Company of Canada
Citation	EYB 2010-174936
The Court	Quebec Court of Appeal
At issue	The Québec Court of Appeal had to determine if claims for latent defects, notably arising out of the sale of a house, could be covered under a residential insurance policy.
Factual summary	<p>Johnston sold his house and shortly thereafter had to deal with a claim for latent defects by his buyers. The latent defect in issue was related to an old oil heating tank that had been buried and caused a contamination due to its perforation.</p> <p>Faced with this claim, Johnston filed warranty proceedings against his insurer, namely Chubb, on the basis that he was covered for “all property damage which take place anytime during the policy period and are caused by an occurrence”. He therefore sought coverage on his buyer’s latent defect claim.</p> <p>On the other hand, Chubb argued that the latent defect claim from Johnston’s buyers could not be considered an “occurrence” as per the policy wording or in general for that matter.</p>
Decision	<p>The Court confirmed the trial judge’s ruling to the effect that coverage could not be triggered since there had been no damage caused by an occurrence to the property, the whole following a correct interpretation of the policy wording.</p> <p>Moreover, the Court referred to section 2465 of the Québec Civil Code which states that “the insurer is not liable to indemnify for injury resulting from natural loss, diminution or losses sustained by the property arising from an inherent defect in or the nature of the property”.</p> <p>The Court also added that, in reality, the amount that the seller was condemned to pay to the purchaser was solely the restitution of a part of the paid purchase price in view of reflecting the true value of the said property at the time of the sale, the whole considering the alleged defects and real state of the property itself.</p> <p>This decision confirms previous lower court decisions to the same effect and will confirm the position taken by most insurers in the Province of Québec as to claims related to latent defects.</p>