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## **Title insurers come under fire in Quebec**

The governing bodies of the notary and legal professions in Quebec have launched a lawsuit against several title insurance companies over the preparation and registration of mortgages and discharges of mortgages on real estate in the province.

The Chambre des notaires du Québec and the Barreau du Québec are also seeking an injunction to halt what they term the “unauthorized practice of law” that is “compromising the protection of the public.”

(In Quebec, unlike Ontario, both notaries and lawyers may legally process real estate transactions.)

In a joint statement announcing the litigation, the Chambre and the Barreau claim that in recent years, certain title insurers doing business in Quebec have not restricted their activities just to issuing title insurance policies, but are “taking over the entire process of drawing up (and registering) mortgages offered by several financial institutions conducting business” in the province.

In their statement of claim, the plaintiffs allege that mortgage contracts are not being prepared by legal experts responsible for having them explained and signed, and that the legal rights of the parties, particularly the borrower, are not being properly protected.

The case has not gone to trial and none of the allegations against the defendants has been proven in court.

The litigation does not question the existence of title insurance as a stand-alone product, but only the contracting practices of the defendant title insurance companies in Quebec which issue policies without the involvement of an independent lawyer or notary.

The thrust of the Quebec litigation is the claim that the parties to a mortgage transaction are often represented by a person chosen by the title insurer, rather than an independent legal professional.

The companies targeted by the legal action are FCT Insurance Company Ltd., First American Title Insurance Company, First Canadian Title Company Ltd., Chicago Title Insurance Company Canada, and FNF Canada, a financial services company which utilizes the services of various title insurers.

The defendants also issue title insurance policies in Ontario. In this province, competing title insurers like TitlePLUS and Stewart Title only issue title insurance policies on mortgage transactions with the involvement of an independent lawyer.

It will be interesting to see if the Law Society here in Ontario follows the lead of its Quebec counterparts with similar litigation.

(Full disclosure: I am an ex-officio director of the Law Society of Upper Canada, which owns TitlePLUS, a competing title insurer. I have no role in its operation except to vote on approval of its parent company’s annual reports.)

Commenting on the Quebec litigation, First Canadian Title issued a statement saying that the company “has diligently worked with all regulatory bodies to ensure that all products and services comply with federal and provincial regulations. First Canadian Title will vigorously defend its position to provide these valuable products and services to Quebec consumers.”

FNF Canada, a division of Fidelity National Financial, responded: “We will be vigorously defending ourselves against the claim but decline to comment further given the pending litigation.”

Chicago Title did not respond to a request for comment.

Also involved in the litigation as a result of their roles in protecting the public interest are the Quebec Office of Professions, the Minister of Justice, the Minister of Natural Resources and Wildlife, the Financial Markets Authority, the Land Registrar, and the provincial regulator of land surveyors.

Accompanying the announcement of the litigation, the Chambre des notaires issued a communiqué to solicitors in the province reminding them that the active intervention of a solicitor in mortgage financing transactions is imperative to ensure that all the parties to a mortgage contract are fully informed of the nature and consequences of the documents they are signing.

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