

PREPURCHASE BUILDING INSPECTION

You get what you pay for

(This magazine article is about the current state of the prepurchase building inspection field in Montreal, Canada.)

By Morris Charney
Architect and Building Inspector
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Why have a property inspected?

Do it in order to be an informed consumer. To have a better idea of the value of what you are buying. True value is appraised market value less the cost of bringing the property into a good state of repair. The purpose of a prepurchase building inspection is to reveal apparent defects - knowing what the apparent defects are makes it less likely that you will discover hidden or latent ones after you move in or take possession. It is too expensive to sue a vendor for latent defects. Preventive medicine makes more sense. New properties, new construction require prepurchase inspections not only older properties. Inspecting new construction is more difficult than an older property - symptoms or problems have not manifested themselves as yet. A building which is not used has not proven itself. Then again, you may be amongst those who believe in the romantic approach - buying blind, taking one's chances, etc, "I never had my husband checked out when I got married so why fuss over the house. Let fate take its course." Young romantics who do not care about money (especially if their parents are helping them) may not need a prepurchase building inspection. It is their choice. A poor inspection may only give you a false sense of security.

Realistic expectations: What constitutes a good inspection?

A prepurchase building inspection should communicate in the most effective way possible what are the important (costly) repairs a purchaser should expect in regard to apparent defects. It is important to provide the cost of those repairs so that their significance becomes clear. However, a prepurchase building inspection is not a detailed or exhaustive expertise. It is more of a summary report. It is done within a couple of hours. On the other hand, it should not be a checklist. One should not be presenting a "reference book" involving hundreds of pages. Those books are like a maintenance manual. It is like giving someone a dictionary to write a letter. In such cases the communication is meaningless. Checklists are too vague, too subject to interpretation. The inspector should state his key observations simply and clearly, first verbally and then in written form if it is required. Clear photos of defects are even easier to understand (worth 1,000 words etc.). The text should be a narrative of what the major defects are - not descriptive, not an inventory of what is there. It is worthwhile knowing how urgent the repairs are and what the cost of doing the work is. Being able to provide the names of competent, reliable contractors who can do that work is useful. I do not believe providing names is a conflict of interest. It is in keeping with fostering excellence and promoting good work. It shows that the inspector is in contact with the trades and has been responsible for supervising the execution of work. It shows the experience. Recommend tradesmen for the quality of their work not because they are cheap.

The key qualities to look for in an inspector are competence (usually comes with experience) and ability to do diagnostic work. Not everyone is good at diagnostic work. One also has to have good equipment. This is the electronic age. It would be ridiculous to be recommend someone who is not good at finding defects which usually means someone thorough, meticulous and detailed oriented. I find it remarkable that real estate agents keep recommending the most incompetent inspectors - those that hardly find any defects - the same people over and over again - for decades, mostly based on their minimal fees. The best way to overcome this is by choosing inspectors who work independently of the real estate industry. When I taught

building inspection at the university level to practising architects or engineers (continuing education course) I would mention that one should have at least 10 years of renovation experience under one's belt before attempting to do a prepurchase inspection. A lot of experience is needed to be able to read symptoms easily and quickly. The work is not easy. You get your hands dirty. You have to be willing to get into crawl spaces and attics. One should be using and be familiar with all the latest electronic devices to assist in this task.

The real estate industry is too involved - conflict of interest:

Unfortunately most of the architects and engineers I taught over the years are not doing prepurchase building inspections any longer. Individuals recommended by real estate agents - inspectors who do very superficial jobs for very little money, have priced them out of the market. The problem for years has been the interference of the real estate industry in the inspection business - recommending who should be doing an inspection to the purchaser and trying to dictate the contents of a report by virtue of clauses put in the offer to purchase. It is a sad reflection on the state of affairs when most prospective buyers call up and the first question they ask is, "What do you charge?" It is rare that someone will ask, "What are your qualifications?" Sometimes the amount of money charged is the only question they ask. What incentive is there for an inspector to work hard to find defects if he is paid on a fixed fee basis. This work should be done on an hourly basis - one should feel the mandate is to find the defects not to do a quick once over survey.

Last week I listened to an interview of Mr. Nadeau on the CBC. He is the lawyer representing the Association of Real Estate Agents (l'Association des courtiers et agents immobiliers du Québec). The interview was in regard to their lobbying the Quebec government together with the Association of Building Inspectors of Quebec to have all prepurchase inspectors "certified". There was also an interview in La Presse (February 21, 2004) on the same subject. Mr.

Nadeau was complaining of the poor quality of prepurchase inspections. He gave an example of an inspection that only lasted a half hour. I could not help asking myself, "Was this an inspector recommended by a real estate agent?" Most of them, usually are. Purchasers who call me in regard to "hidden defects" (i.e. pursuing a vendor through litigation) will inevitably mention that the prepurchase inspection was done by an inspector recommended by the real estate agent. These recommended inspectors on lists which the agents turn over (or mention verbally) represent a major conflict of interest. The inspectors on the list were not chosen because they have the best qualifications or are the most competent. They would not make it on their own without the referrals of agents - and you do not bite the hand that feeds you. Agents want sales to go through. They do not like meticulous reports that reveal too many problems. For decades I have been enduring the insults of agents who refer to me as "the troublemaker" or "the deal breaker" - until I discovered through the IHINA (Independent Home Inspectors of North America) website that the real estate industry has singled out people like myself throughout North America. Every major city has inspectors with the same designation as myself. Denis Robitaille of Boston has formed this association. Massachusetts is one of the first states to make it illegal for real estate agents to recommend building inspectors. I have always been of that opinion. It is disheartening to see the Quebec Association of Building Inspectors (l'Association des inspecteurs du bâtiment du Québec) teamed up with the Quebec Real Estate Board (l'Association des courtiers et agents immobiliers du Québec) in their desire to improve matters. The real estate industry has its own interests to serve. Their constituency are the real estate agents - it is not the consumer. In the last 10 years the formulas they were using for offers to purchase began changing. For decades, offers to purchase had a clause which simply said the offer was conditional on a satisfactory building inspection (i.e. the purchaser had to be satisfied with the results of the prepurchase building inspection report). Over a period of years the wording in these "standard" offers to purchase started changing on a regular basis. The consumer hardly even paid attention to these clauses. Key clauses were rewritten. At first they indicated that a major defect is necessary to

render an offer null and void - but then the word "major" was never defined. It was stated it could not be superficial. I recall a court case regarding a claim for a hidden defect by a single mother. She explained to the judge that the \$500 repair for a foundation crack was major for her with her limited budget even if it may seem like an insignificant amount to others (she won her case). In fact, it is very difficult to define the word major. Take the example of a purchaser who suffers from MCS (multiple chemical sensitivity) who may have a whole series of major concerns. These can never be defined beforehand in a standard offer. Every purchaser has their own list of major concerns and budget restrictions that cannot be predetermined. In the last 5 years or so, the real estate industry introduced another requirement in their standard offer to purchase forms - "If the inspection should reveal a significant defect then a copy of the inspection report has to be turned over to the vendor." That opened up a new can of worms - without improving the quality of prepurchase inspections one bit. Now we have vendors in addition to purchasers trying to understand the inspection report. It is a difficult enough task just to get a purchaser to understand the problems. Most vendors are somewhat hostile to prepurchase inspectors and not inclined to read and understand what is wrong with the house they are trying to sell. Let me relate how ridiculous and counterproductive that can become from my own experience at one house. It involves a large expensive home I inspected where I reported a substantial amount of repairs were needed. The vendor was a lawyer. When the offer fell through because the purchaser was not satisfied with the results of my report the vendor sued for the difference between the accepted offer and any future offer he should accept, claiming I had exaggerated the repair costs as outlined in my report. Eventually the house was sold but for substantially less than what my client had offered and I was sued for the difference. However, the new purchaser spent three times what I had estimated in repairs so it blew the lawyer's case out of the water. The matter was dropped. The lesson to be learned - this was undue interference from the vendor in the purchase process based on a biased interpretation of my prepurchase inspection report. A purchaser should not have to justify the contents of a prepurchase inspection report. There should only be one client - the purchaser.

I do not believe disclosure laws, which is also being recommended by the Real Estate Board, is the answer. California has such a law. I have done inspections there. I found the disclosures are subject to interpretation and even misleading. It may provide more work for lawyers which is not helpful.

The legal aspect: The “new” Civil Code of Quebec, deregulation

I blame the current mess we are in not on the lack of competent or qualified professionals but on the fact that they cannot be induced into doing prepurchase inspections - they have been priced out of the market. Instead of the older experienced architects and engineers we have young inexperienced technologists and contractors. A major contributing factor to the deterioration is the “new” Civil Code of Quebec. Up until it changed, excellence was being promoted by those doing prepurchase inspections in that the jurisprudence was that you should hire an expert - “caveat emptor”, “buyer beware” (Ref. Prof. John W. Durnford, “What is an apparent defects in the contract of sale?” (1964), McGill Law Journal, 68-84). The new code that came out in 1994 had the impact of deregulation - in particular article 1726 defines an apparent defect as one “that can be perceived by a prudent and diligent buyer without any need of expert assistance.” That opened up the field to anyone and everyone. I now look at it as a “make work project” for lawyers. It has not helped the consumer but it certainly made work for lawyers.

It has become too expensive for most homeowners to go to court - too much of a monetary risk. Lawyers are expensive, the cost of an expertise - a detailed litigation-type report - is expensive.

The fact that Small Claims court was increased to \$7,000 encourages some consumers to sue using that method (no lawyers involved). However, the outcome is never certain. Preventive medicine is still less expensive – pay for a thorough prepurchase building inspection – that is the key.

Order of Architects of Quebec - Stopped encouraging that kind of activity:

Well-intentioned clients frequently ask me when I intend to get back to practising architecture. I consider prepurchase building inspections practising architecture. It is a worthwhile and noble task. It is helping the ordinary consumer – the public at large.

When the Order of Architects started self-assuring about 9 years ago they looked at prepurchase building inspection as being a high risk activity. Memos were sent out to all the members in that regard – mentioning cases involving claims and losses etc. Premiums were increased and it was made clear that this kind of work is not being promoted. Norms were recommended which were being used by the Canadian Association of Home Inspectors - ones which I considered superficial - like checklists and operating with lots of disclaimers, etc. Most architects began thinking twice about doing prepurchase inspections. The technologists began moving into the field in greater numbers, especially after they formed their own professional order. I always considered architects as being GP's (general practitioners) and engineers as being the specialists. It was rare that engineers followed all aspects of residential construction from design conception to interior layout. In fact, when I started to do building inspections at CMHC in the summer of 1961, I worked in "the division of non-engineered structures." It was rare for architects let alone engineers to be involved in residential construction in Canada at the time. We now have university courses teaching building engineering which almost sounds like a generic term. Many of these young graduates go directly into prepurchase inspections as a start out activity. They do not have 10 years of

trying to plan and supervise renovations or new construction. I believe all architects should be doing inspections so as to get firsthand feedback as to how well their designs are doing – knowing the problems of the consumer would help them in their design.

In the pursuit of excellence, professionals doing prepurchase building inspections should be encouraged to accept liability for their work. They should be signing their own name. That is what being professional is all about.

Contents of reports - operating with disclaimers:

I consider the typical inspection report done today as being more of an inventory (a list of what is there) than a diagnostic effort (assessment, determination, recommendation). There are so many disclaimers that one wonders what liability is being assumed. What is the point of error and omission insurance if you are going to operate with so many disclaimers? The Canadian Association of Home Inspectors excludes comments about building codes. That is an essential part of a prepurchase inspection. The building code is updated every 5 years. It is concerned with matters of health and safety. One should always be explaining the shortcomings of a property in terms of current codes. I have always considered matters of health, safety, the environment and air quality as being among the most important aspects of an inspection. I bring the necessary equipment to each prepurchase inspection. To assess a property in terms of the code for the year in which it was built is nonsense. I live in a house that is 100 years old. I do not live with the standards of 100 years ago.

It is ridiculous to refer technical components of a building such as plumbing, electrical, mechanical, fireplaces and stoves to other specialists. That is not doing a prepurchase inspection. That is glossing over it - doing half a job.

As mentioned earlier, providing estimated costs - even if they are only ballpark numbers - and names of competent tradesmen for difficult repairs jobs gives some meaning to the report.

Summary checklists, in my opinion, constitute the worst type of prepurchase inspection report, especially when there are 6 or so checklisted pages interspersed in a large 100 page reference book. The information is too vague, too minimal. It is difficult to discern any clear recommendations - the "bottom line" page seems to suggest that everything is about average. Overall assessments, generalized statements are meaningless. Oversimplifications create false impressions. It is like a real estate agent's typical remarks, "But will the place collapse? Is it not sound?" while you are trying to explain some problem in regard to the roof or the mechanical system. The structural aspect of a building only represents about 20% of overall costs.

A short report of a few pages that clearly states what the defects are and what it would cost to repair is still the best kind of report.

Promoting excellence - raising the standards - accreditation:

Encouraging consumers to shop around for the lowest price is counterproductive. Architects or engineers who do prepurchase inspections should be charging their normal hourly rate (based on years of experience). It would mean costs of reports would double (\$300 vs \$600, \$600 vs \$1,200). Those inspectors who are competent, those who have a lot of experience, should be able to charge more. The current rate of \$300 to \$500 is too low.

Accreditation already exists via the Order of Architects, Order of Engineers and the Order of Technologists.

I doubt the Government is going to recognize yet another profession - another professional order. It is a long process requiring unnecessary training. The Quebec Association of Building Inspectors is in no position to become another profession.

The APCHQ, the ACQ offer a new home warranty programme involving inspection. The problem with those inspections is that the consumer is lead to believe these organizations are governmental bodies, which they are not. The contractors and developers have created these organizations and they serve their interests. Their inspectors are not objective. In my experience they have always sided with the builder for the expensive repairs, perhaps agreeing on a few minor repairs to safe face. They are incapable of resolving serious deficiencies that require intervention. Whenever I have gone to court as an expert in regard to claiming for deficiencies at new houses, the APCHQ or the ACQ were on the side of the builder/defendant.

Looking at the yellow pages in the phone book we see advertisements from inspectors that they are accredited by consumer associations, the CAA, members of the Quebec Association of Home Inspectors. None of those accreditations or memberships carries any legal weight. It just confuses the consumer. The word is being misused.

Prepurchase inspections have become (by and large) weak and ineffective reports. Nothing will change (improve) until the consumer begins to appreciate the value of a good inspection report. For the time being the cost seems to be the determining factor. The greatest influences have been the real estate industry (with their control over the offer to purchase forms) and the legal profession through the deregulation that came with the new Civil Code supposedly, purchasers can do an inspection if they are prudent and diligent.

<http://www.independentinspectors.org/>