



Case in Brief: **Toronto-Dominion Bank v. Young**

Judgment of November 7, 2019 (written reasons issued June 19, 2020) | On appeal from the Court of Appeal of Quebec
Neutral citation: 2020 SCC 15

The Supreme Court issued written reasons in a case decided from the bench in November 2019.

In 2009, Ms. Macht got a loan for \$306,000 from TD Bank. The loan was secured by a hypothec on her house. (A hypothec in Quebec’s civil-law system is like a mortgage in common-law provinces and territories.) She also got a loan of about \$94,000 from the Youngs. It was also secured by a second hypothec. The Youngs knew about the first hypothec with the bank.

Ms. Macht stopped paying her loans. If a hypothec doesn’t get paid, the person owed money can force the property to be sold or can take it themselves. The Youngs asked the Quebec court to force Ms. Macht to give up the house in order to pay the debt she owed them. In 2011, the court declared them the owners. But the bank still had its hypothec on the house.

Shortly after, the bank asked the court to be allowed to take the house from Ms. Macht because its hypothec wasn’t paid. But the Youngs owned it now. They paid the bank what Ms. Macht owed in missed payments, even though they didn’t agree they had to.

The bank asked the court to force the Youngs to give up the house in order to pay Ms. Macht’s debt. The trial judge agreed with the bank, and said it was the owner. The Court of Appeal disagreed. It noted that the bank only took action against the Youngs, who owned the house at the time. The bank didn’t take action against Ms. Macht, who personally owed it the money. The Court of Appeal said the hypothec didn’t exist anymore. It had expired even before the trial judge made his decision. The bank should have taken action against Ms. Macht to stop it from expiring. But the time had expired, so it was too late for it to do this and try to get its money back from the Youngs.

The Supreme Court decided this case “from the bench” at the end of the hearing on November 7, 2019.

When a case is decided “from the bench,” it means an oral decision is given right away. The parties don’t have to wait for a written decision, which takes some time (an average of about five months in 2019). About a third of decisions were given from the bench in 2019.

When a case is decided from the bench, the Court will sometimes give a written explanation (reasons) later. This can be done to make things more clear. In most cases, though, there won’t be written reasons. This doesn’t mean there is no explanation. When giving the oral decision, the Court might give a short explanation, or say something like, “we allow (or dismiss) this appeal substantially for the reasons given by the Court of Appeal.” That means it’s relying on the reasons of the lower court, which basically got it right.

In this case, the majority of judges agreed completely with the Court of Appeal. The Court of Appeal’s decision stayed in effect. That meant the Youngs got to keep the house and the bank couldn’t claim anything on it.

Canada has two major legal traditions, common law (based on English law) and civil law (based on the French civil code). Quebec is the only province that applies civil law. It can be found in the province’s *Civil Code*, which applies to most non-criminal legal issues. Some concepts – like mortgages and hypothecs – are similar under common law and civil law. But they are often based on different principles and can have different rules. Having two main legal traditions helps make Canada unique. In fact, the Supreme Court of Canada is the only bilingual (two languages) and bijural (two legal systems) supreme court in the world.

Breakdown of the decision: **Majority:** Chief Justice Richard [Wagner](#) and Justices Rosalie Silberman [Abella](#), Michael [Moldaver](#), Andromache [Karakatsanis](#), Russell [Brown](#), Malcolm [Rowe](#), Sheilah [Martin](#), and Nicholas [Kasirer](#) dismissed the appeal from the bench | **Dissenting:** Justice Suzanne [Côté](#) said the bank took action in time, before the claim against Ms. Macht expired, and it didn’t need to take action against her personally because the debt was also connected to the property

More information (case # 38242): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings (in French only): [trial](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec)
