

# KEEPING CURRENT

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## No reasons required for using lawyer review clause to terminate transaction (*Yui v. Yan*)

By James R.G. Cook

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**James R.G. Cook**  
Partner  
416.865.6628  
jcook@grllp.com

In cooling real estate markets, it may be increasingly common for buyers to include various conditions in an Agreement of Purchase and Sale (APS) allowing them to take the time to consider and back out of a proposed transaction. One condition that may be included in an offer is for the buyer's lawyer to review and approve the APS. If a buyer subsequently backs out of the transaction using this condition, the seller may understandably question why the buyer has done so. However, a buyer may be under no obligation to disclose any reasons for relying on the lawyer's review condition.

In *Yui v. Yan*, [2025 ONCA 410 \(CanLII\)](#), the buyers entered into an APS with a seller (by way of an assignment) and paid a \$60,000 deposit. The APS included a condition that provided the buyers with the right to terminate the APS if its terms were unacceptable to their lawyer based on their lawyer's opinion. Any notice terminating the APS had to be delivered in writing within 17 banking days after accepting the offer.

Before this deadline, the buyers' agent emailed the seller's agent and stated "I'm sorry, they have decided to back [out]. I'm sorry that we have wasted so much of your time. Thank you!".

Notwithstanding receipt of this email, the seller took the position that the buyers' termination was not a valid exercise of the lawyer's approval condition. The seller refused to return the deposit and litigation ensued.

In the court application, the buyers argued that they had properly exercised their right to terminate the agreement and were therefore entitled to a return of their deposit.

In response, the seller argued that the lawyer's approval condition only permitted the buyers to terminate the APS if their lawyer did not approve its terms and there was no evidence that the lawyer had not done so. Rather, the seller argued, the buyers had only advised that they were "backing out" of the deal. The seller's

position was that the condition could not be waived at the buyers' sole discretion.

The application judge rejected the seller's position. Based on the timing of the agent's email, the buyers had provided adequate notice of their wish to terminate the transaction. The buyers' evidence was that they had consulted with a lawyer before deciding to terminate the APS. While the seller complained that they had not provided any reasons for terminating the transaction, the condition did not require the buyers to do so and in any event, communications with their lawyer were protected by solicitor-client privilege. The application judge therefore ordered the return of the deposit: 2024 ONSC 6674 [not on CanLII].

The seller appealed the decision to the Court of Appeal for Ontario, arguing that the application judge erred in concluding that the buyers properly exercised the termination condition and that solicitor-client privilege applied. The Court of Appeal rejected these arguments.

The Court of Appeal agreed with the application judge that there was nothing in the termination condition that required the buyers to specifically disclose that their lawyer did not approve the APS or any reasons why it was not approved.

Further, the inclusion of the lawyer's approval condition did not imply any waiver of solicitor-client privilege. The condition stated that it was subject to the lawyer's "own and absolut[e] opinion". As the termination was within the lawyer's sole discretion, there was no requirement to disclose what the opinion was. There was no error in the application judge's finding that the buyers complied with the termination condition. The appeal was [dismissed](#).

The case illustrates the benefits for buyers of including a lawyer's review condition in an APS and affirms that a party to an APS is

not generally required to disclose privileged communications with their real estate lawyer merely because they have exercised their rights under a lawyer's approval condition. While there may be some obligation for buyers to act in good faith by at least consulting with a lawyer during the conditional period, there is likely no obligation to disclose the reasons for relying on the condition unless required by the specific wording in the APS (see also *1824120 Ontario Limited v. Matich*, [2023 ONSC 938 \(CanLII\)](#)). If a seller wants to require a buyer to disclose the reasons for terminating a transaction based on the lawyer's review condition, or to put any limitations on the reasons for the lawyer's approval, they should attempt to include such wording in the APS.

## Contact Us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [James Cook](#), at 416.865.6628 or [jcook@grllp.com](mailto:jcook@grllp.com).

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