

For the second element of the test, the defendant established, on a balance of probabilities, that the plaintiff's representation of her reason for selling the property "was a false representation by omission," says the judge.

In order to prove fraudulent misrepresentation, the B.C. decision says the defendant must establish the following elements:

1. the vendor made a representation of fact to the purchaser;
2. the representation was false in fact;
3. the vendor knew the representation was false when it was made, or made the false representation recklessly, not knowing if it was true or false;
4. the vendor intended the purchaser to act on the representation;
5. the purchaser was induced to enter into a contract in reliance upon the false representation and thereby suffered a detriment.

O'Connor says fraudulent misrepresentation cases aren't unique, but the facts of this particular matter are unusual with the issue of the murder.

"Many people don't realize that once you sign an agreement for purchase and sale, it's a binding contract that you can't get out of — you could lose your deposit and you could be sued if the house later sells for less," she says.

"And even though this is a B.C. case, the same principles apply here in Ontario."