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James R.G. Cook

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Expertise

Litigation and Dispute Resolution

Education

- Osgoode Hall Law School, LL.B., 2002
 - Simon Fraser University, M.A., 1997
 - University of Manitoba, B.A. (Hons.), 1995
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Bar Admission

- Ontario, 2003

Executive Summary

James is a partner at Gardiner Roberts and has been with the firm since he articulated here in 2002. As a litigator in the firm's Dispute Resolution Group, James has experience in a broad range of commercial, real estate and professional liability litigation, including:

- Professional liability for lawyers (real estate, litigation, family/estate, commercial transactions), financial advisors, accountants, mortgage brokers and real estate agents.
- Real estate litigation involving a wide range of closing disputes, title defects, mortgages, easements and adverse possession, title insurance, cottage issues, condominium disputes and Land Titles Act hearings.
- Commercial contract and business asset disputes, oppression remedies, director/officer liability, shareholder and partnership disputes, privacy issues, receivership liability and various forms of urgent interim relief, including Mareva/civil fraud, employment and non-competition injunctions, and Anton Piller orders.
- Defamation including Internet-based liability.

James has successfully represented clients as trial and appellate counsel including a claim where the court stated that the allegations could "rock, if not destroy" his client's career. In another successful trial decision, James persuaded the court to describe his client's widely distributed business agreement as "iron clad". James was counsel in one of the only known decisions where an action was stayed by a court at the outset as a result of improper conduct by the opposite party (who hacked into his client's computer server). Experience is everything.

Representative Work

- **Lawyer's Professional Liability / Ineffective Assistance of Counsel**
 - *Greenspan v. Goldman*, 2022 ONSC 5578
 - *Locke v. Sultana et al*, 2022 ONSC 4347 (CanLII)
 - *Braysan Properties Inc. "In Trust" v. Muchos et. al.*, 2022 ONSC 3703
 - *2658396 Ontario Inc. v. Sanayei*; 2022 ONSC 3189
 - *Vinczer v. 7084421 Canada Ltd.*, 2022 ONCA 400 (CanLII)
 - *Bors v. Bors*, 2021 ONCA 513
 - *9383859 Canada Ltd. v. Navaratnam*, 2021 ONCA 210
 - *Glegg v. Glass*, 2020 ONCA 833 (CanLII)
 - *Bielanski v. Mundenchira*, 2020 ONCA 811, affirming 2019 ONSC 1162 (CanLII)
 - *9383859 Canada Ltd. v. Saeed*, 2020 ONSC 4883 (CanLII)
 - *Peel Children's Aid Society v. M.H.*, 2018 ONCA 619 (CanLII)
 - *Garrett v. Oldfield et al*, 2014 ONSC 508 (CanLII)
 - *Richmond v. James*, 2008 CanLII 73705 (ON SC), 69 B.L.R. (4th) 79, 79 R.P.R. (4th) 267 - discussed in "Case must be strong if you decide to sue lawyer" The Toronto Star (June 13, 2009)

- *Chuang v. Manning*, 2008 CanLII 14175; 2010 ONSC 6296,
- *Diamond Contracting Ltd. v. MacDearmid*, 2006 CanLII 24444 (ON C.A.)
- **Real Estate Litigation / Title Insurance**
 - *Medeiros v. Baldassarra et al*, 2019 CarswellOnt 19345, 2019 ONSC 2682
 - *Sannuto v. Sannuto*, 2012 ONSC 3903 (CanLII)
 - *Charlebois v. Stewart Title Guaranty*, 2011 ONSC 6824 (CanLII)
 - *Nakhuda v. Stewart Title Guaranty Co.*, 2010 CarswellOnt 11201, 2010 ONSC 4926, [2010] O.J. No. 6170
 - *Freedman v. Toronto (City)*, 2009 CanLII 82620 (ON SC)
 - *Stewart Title Guarantee Company v. Zeppieri*, 2009 CanLII 2329 (ON SC), 94 O.R. (3d) 196 - discussed in “Defending Under Title Insurance” *The Lawyers Weekly* (June 12, 2009))
 - *Dagarsho Holdings Ltd. v. Bluestone*, 2005 CanLII 39321 (ON CA)
 - *T.D. Waterhouse Investor Services (Canada) Inc. v. Srivastava*, 2005 CanLII 35791 (ON SC), 2005 CarswellOnt 4876, 143 A.C.W.S. (3d) 81
- **Commercial Litigation, Lease Disputes, Director/Officer Liability, Corporate Opportunity & Non-Solicitation Claims / Injunctions**
 - *Braysan Properties Inc. v. Muchas*, 2022 ONSC 940 (CanLII)
 - *2184472 Ontario Inc. v. 1637601 Ontario Ltd*, 2016 ONSC 7256 (CanLII)
 - *H&R Block Canada, Inc. v. Inisoft Corporation (Ontario)*, 2009 CanLII 37911 (ON SC)
 - *Autoworkers (Ajax) Credit Union Limited v. Cumis General Insurance Company*, 2012 ONSC 172 (CanLII)
 - *Croatian (Toronto) Credit Union v. Vinski*, 2011 ONSC 7123 (CanLII)
 - *Croatian (Toronto) Credit Union Limited v. Vinski*, 2010 ONSC 1197 (CanLII)
 - *bclMC Construction Fund Corporation v. Preston Spring Gardens Inc.*, 2008 CanLII 1414 (ON SC)
 - *Challenge Gas Holding AB v. Echo Energy Canada Inc.*, 2008 CarswellOnt 8431; 2008 CanLII 19220 (ON SC); 2007 CarsellOnt 9714
 - *Toronto Dominion Bank v. Preston Springs Gardens Inc.*, 2007 ONCA 145 (CanLII), 31 C.B.R. (5th) 167; affirming 19 C.B.R. (5th) 165, 2006 CanLII 15145 (ON S.C.) – discussed in “Defendants denied leave to sue receiver of an insolvent co-defendant” *The Lawyers Weekly* (May 26, 2006)
 - *BMO Nesbitt Burns Inc. v. TD Waterhouse Investor Services*, 2006 CanLII 17338 (ON SC)
 - *Cohen v. YMR Capital Management Corp.*, 2006 CanLII 37780 (ON CA)
 - *Banyan Tree Foundation v. Singh*, 2005 CanLII 44178 (ON SC)
 - *Researchco Ltd. Partnership v. Real Estate Search Corp.*, 2004 CanLII 35008 (ON SC)

- **Breach of Privacy / Unauthorized Intrusion/Hacking of Computer Data**

- *Autosurvey Inc. v. Prevost*, 2005 CanLII 36255 (ON SC), 44 C.P.R. (4th) 274, discussed in “Lawsuit tossed out in ‘extraordinary remedy’” *The Globe and Mail* (November 30, 2005), and “Brute Force Entry Punished: Autosurvey Inc. v. Prevost” *OBA Civil Litigation Newsletter* (May 2006)

- **Defamation**

- *Fuda v. Conn*, 2009 CanLII 1140 (ON SC)

- **Investment Advisor / Brokerage Liability**

- *Paciorka v. TD Waterhouse*, 2008 CanLII 6646 (ON SC), 2007 CanLII 28749 (ON SC)
- *Newman v. T.D. Securities Inc.*, 2007 CanLII 463 (ON SC); 2007 CanLII 10791
- *Gibbins v. TD Waterhouse Canada Inc.*, 2007 CanLII 10789 (ON SC)
- *Shoaga v. TD Waterhouse*, 2006 CanLII 2191 (ON SC), 2006 CarswellOnt 450

Articles and Presentations

- Value of property a key to proving breach of contract, Law360 Canada – August 9, 2024
- Home collapses; over \$640,000 awarded due to water damage from neighbouring property, Real Estate Magazine – July 30, 2024
- Years-long dispute over 22-centimetre strip of land ends in court ruling, Real Estate Magazine – June 25, 2024
- Settler’s remorse: Professional negligence claim against litigation lawyer dismissed, Law360 Canada – June 24, 2024
- Owner allowed to maintain property’s use as three dwelling units despite zoning bylaw changes, Real Estate Magazine – May 31, 2024
- How a defamation claim survived an anti-SLAPP motion, Law360 Canada – May 30, 2024
- Lawsuits. Thousands in damages. How a real estate transaction went wrong and how to avoid common pitfalls, The Star - 4/22/2024
- Mortgage broker’s fee: Borrower’s lawyer not liable, Law360 Canada – April 11, 2024
- Equitable mortgage principles affirmed after defaults of loans secured by property, Real Estate Magazine – April 3, 2024
- Defamation: Employment letter not subject to six-week notice deadline, Law360 Canada – March 19, 2024
- Land boundaries battle resolves after two decades as court determines liability for property encroachment, Real Estate Magazine – January 26, 2024
- Ex-sister-in-law bare trustee denied order to sell jointly-owned property, Real Estate Magazine – December 12, 2023
- Rare ruling: Ex tenant-in-common denied right to sell home 18 years later, Real Estate Magazine – October 24, 2023

- Novel Family Violence Tort has no Place in Ontario Law, Court of Appeal Rules (*Ahluwalia v. Ahluwalia*), Canadian Family Law Matters – October 20, 2023
- Legal dispute: Co-owner’s son buys second mortgage in attempt to force property sale, Real Estate Magazine – October 13, 2023
- Kobayashi Maru: Navigating impossible scenarios in real estate, Real Estate Magazine – October 3, 2023
- Sellers awarded \$210,000 after buyers fail to close due to “unforeseen circumstances”, Real Estate Magazine – September 29, 2023
- No damages caused by listing agent’s failure to recommend legal advice, Real Estate Magazine – September 13, 2023
- Court refuses to impose 5 p.m. deadline for delivery of real estate closing proceeds , Real Estate Magazine – September 6, 2023
- Lawyers obtain interlocutory injunction to stop defamatory social media posts , Law360 Canada –September 1, 2023
- Buyer’s failure to obtain severance amounted to anticipatory breach of contract, Real Estate Magazine – August 29, 2023
- Mortgage provided by corporate borrower with apparent authority is not a “fraudulent instrument”, Real Estate Magazine – August 25, 2023
- Sellers who terminated real estate deal can’t rely on ‘time is of the essence’ clause: court – Law Times, August 17, 2023
- Realtor’s lawsuit fails: Court upholds news reporter’s actions, Real Estate Magazine – June 21, 2023
- Realtor sued after client alleges negligence in land valuation, Real Estate Magazine – June 14, 2023
- Status certificate shock: Inaccurate information leads to \$34,000 bill, Real Estate Magazine – June 12, 2023
- Legal battle over \$400k repair costs highlights need for thorough home inspections, Real Estate Magazine – May 15, 2023
- Title Insurance Dispute Over Appraisal of “Actual Loss” for Defects Relating to Municipal Work Order, Canadian Journal of Insurance Law – May 2023
- Doctrine of champerty prohibits ‘trafficking in litigation’, Law360 Canada – April 18, 2023
- Ontario court ruling highlights deposit risks for new home buyers, Real Estate Magazine – March 21, 2023
- Realtor sued for misrepresenting identity of buyer, Real Estate Magazine – March 6, 2023
- Court upholds solicitor-client privilege in \$16.5M real estate deal, Real Estate Magazine – February 23, 2023
- Seller ordered to obtain severance of residential properties to complete transaction, Real Estate Magazine – February 14, 2023



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- Title fraud is on the rise – here are four ways to stop criminals from selling your house out from under you, *The Star* – January 30, 2023
- Shared driveway dispute between neighbours goes to court, *Real Estate Magazine* – January 25, 2023
- Foreign buyer ban: Realtors urged to review due diligence, *Real Estate Magazine* – January 18, 2023
- Homeowners return from business trip to find their house sold without their knowledge, *Real Estate Magazine* – January 6, 2023
- Borrower's fraudulent actions result in legal victory for tenants, *Real Estate Magazine* – December 23, 2022
- Fraudulent misappropriation: Anti-SLAPP motions fails to stop action, *The Lawyer's Daily* – December 16, 2022
- Agent sues for commission on unaccepted offer, *Real Estate Magazine* – November 10, 2022
- Seller beware: Even if the deal dies, the agent may still want their commission, *Globe and Mail* – September 28, 2022
- A cautionary tale of siblings who owned an investment property, *Real Estate Magazine* – September 6, 2022
- When real estate deals die, deposits are often held hostage, *The Globe and Mail* – August 31, 2022
- The Power of Sale Restored by Court Appeal under "Safe Harbour Protections", *Institute of Municipal Assessors* – Summer 2022
- Family Members Liable for Knowing Receipt of Trust Funds, *Money & Family Law* – June 2022
- Tort of "Family Violence" Provides New Way to Seek Damages for Domestic Abuse – *Canadian Family Law Guide*, June 2022
- Court Refuses to Impose 5 pm Deadline for Delivery of Real Estate Closing Proceeds – *Ontario Real Estate Law Developments*, May 2022
- Defamation claims in social media boxing ring, *The Lawyer's Daily* – March 29, 2022
- Ontario man 'jumped into the turbulent river of Twitter' and 'got wet in the process': judge, *The Lawyer's Daily* – March 21, 2022
- No duty of care owed by seller to confirm buyers had financing, *Real Estate Magazine* – Mar 14, 2022
- B.C. court awards damages arising from Realtor's liability for foreign buyers' tax, *Real Estate Magazine* – Feb 22, 2022
- Early disposition of a defamation action – *The Lawyer's Daily*, February 3, 2022
- Government liability for policy decisions following *Nelson (City) v. Marchi* – *Toronto Law Journal*, January 2022
- Sellers can't rely on "escape clause" to accept a better offer, *Real Estate Magazine* – January 17, 2022
- Unfulfilled promise to transfer family property upheld by appeal court, *Real Estate Magazine* – Dec 20, 2021



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- Personal injury firm granted injunction against ex-associate following long-weekend takeover, *The Lawyer's Daily* – December 15, 2021
- Buyers bound to agreement negotiated by family friend, *Real Estate Magazine* – Nov 16, 2021
- Dispute over fence location results in liability for trespass, *Real Estate Magazine* – Oct 26, 2021
- Estate's Claim to Recover \$700,000 Gift From Elderly Man to Fianceé Dismissed, *Money & Family Law* – October 2021
- Mortgage prepayment charge improperly imposed by lender, *The Lawyer's Daily* – October 19, 2021
- The perils of not having a written contract for a home construction project, *Real Estate Magazine* – Oct 12, 2021
- Condominium owner liable for costs due to tenant's misconduct, *Real Estate Magazine* – Sept 27, 2021
- Oral agreement results in years of litigation between father and daughter, *Real Estate Magazine* – Sept 7, 2021
- Discharge Statement Rights, *The Canadian Mortgage Broker Magazine* – Summer 2021
- Buyers lose right to recover deposit after seller breaches agreement, *Real Estate Magazine* – Aug 16, 2021
- Commission owed to real estate agent despite lack of written agreement, *Real Estate Magazine* – July 26, 2021
- Business common sense' determines winner of commission dispute, *Real Estate Magazine* – July 5, 2021
- Fees, Costs and Penalties: Court denies mortgagee's claim for unproven fees and charges related to overdue mortgage; *Canadian Mortgage Broker Magazine* – Spring 2021
- Buyer's failure to waive conditions nullifies Agreement of Purchase and Sale, *Real Estate Magazine* – June 21, 2021
- Pizza delivery bars claim for indemnity under insurance policy, *The Lawyer's Daily* – June 1, 2021
- Buyer loses \$100,000 deposit after refusing to purchase condo, *Real Estate Magazine* – June 1, 2021
- Building Code Liability: Municipality Liable For Failure To Inspect, *Municipal Liability and Risk Management*, Volume 22, Number 4 – May 12, 2021
- Ontario Court of Appeal upholds Law Society Tribunal decision involving Toronto lawyer, *The Lawyer's Daily* – May 12, 2021
- Commission claim dismissed – buyer representation agreement ruled unenforceable, *Real Estate Magazine* – May 11, 2021
- Claim For Adverse Possession of Land Against an Unknown Owner, *Ontario Real Estate Guide*, LexisNexis Canada – April 2021



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- Abandoned Use of Easement Leads to Loss of Backyard Parking Pad, IMA Insta-News (Insitutue of Municipal Assessors) – Spring 2021
- Legal Non-Conforming use Prevents Municipality From Enforcing Zoning By-Law, IMA Insta-News (Insitutue of Municipal Assessors) – Spring 2021
- Parent’s Claim to Recover Home Transferred to Daughter Dismissed, Money & Family Law Magazine– April 2021
- When are buyers entitled to rescind a purchase agreement? Real Estate Magazine – April 20, 2021
- Airbnb cottage renters allowed to access lake via right-of-way, Real Estate Magazine – Mar 31, 2021
- Viewing the Supreme Court of Canada’s Decision in Callow Through a Compliance Lens; Municipal Liability Risk Management, Lexis Nexis – March 2021
- Township liable for failing to inspect construction, Real Estate Magazine – Feb 24, 2021
- Freelance Consultants Not Bound by Non-Competition Agreement, CIPS Connections – January 28,2021
- Homeowners ordered to remove pool built over municipal easement, Real Estate Magazine – Jan 27, 2021
- Seller ruled not responsible for property zoning or future use limitations, Real Estate Magazine – Jan 11, 2021
- Misrepresentation in square footage leads to rescission of Agreement of Purchase and Sale, Real Estate Magazine – Dec 14, 2020
- Injunction granted against municipality in fire-pit dispute on disputed lands, The Lawyer’s Daily - November 26, 2020
- Water damage insufficient to terminate transaction - November 25, 2020
- Buyer’s Claim For Lost Value Damages Of A Residential Subdivision Home, Ontario Real Estate Law Developments; LexisNexis – October 2020
- Real estate agent’s defamation claim survives anti-SLAPP motion, Real Estate Magazine – October 15, 2020
- Partial shutdown of business does not preclude business interruption claim, The Lawyer’s Daily – October 2, 2020
- Zombie Deed Sparks Reoccurring Legal Debate – March 11, 2020
- Dispute Over Outhouse Clogs Up The Courts: Armstrong v. Moore – January 29, 2020
- Dismissal of abusive proceeding upheld; Home buyer who got more land than he bargained for not entitled to damages for lost secondary transactions – April 2, 2019
- In the Cold Light of an Unfavourable Result, Blaming Your Lawyer Will Not Brighten Your Prospects – March 29, 2018
- Advertisers Beware – December 5, 2017



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- Cottage Country Access Lessons – August 22, 2017
- Mortgage Fraud: Who Has Priority In A Dispute? – March 29, 2017
- Social Media Issues for In-House Counsel: An Update – Nov 2016

Professional Involvement

- Law Society of Ontario
- Ontario Bar Association (Civil Litigation)
- The Advocates' Society
- Toronto Lawyers Association