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Watch for the next issue in your Inbox in September 2012.*

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Policy Reasons Prevent Exercise of *Homesteads Act* Veto Power by Trustee in Bankruptcy

In [*Chartier v. Chartier Estate \(Trustee of\)*](#), 2012 MBQB 17, the court considers the novel issue of whether a spouse's right under *The Homesteads Act* to veto the sale of homestead property owned by her spouse vests in her trustee in bankruptcy. The court rejected the trustee's argument that he should be compensated for loss of homestead rights even though the bankrupt was not opposed to her husband selling the property and did not herself seek compensation. The court said:

The assertion of the trustee here of a right to exercise the bankrupt's veto power, that is to say, of a right to compel her husband to pay a sum to the trustee before selling the home is...an attempt to hold him ransom for payment of the debts of his spouse. It flies in the face of the notion that married persons are separate as to property and turns the objective of homestead rights on its head. (para.38)

The veto right under *The Homesteads Act* does not fall within the broad definition of property in [s. 2](#) of the *Bankruptcy and Insolvency Act* said the court, and does not create a "thing in action" to enforce a right except where the owner spouse sells the homestead without the non-owner's consent. In addition, strong policy reasons exist for not allowing the trustee to exercise either the veto power or the right to seek an

accounting under *The Family Property Act*, "as doing so would undoubtedly have a negative effect on the family unit" (paras. 36-37). The court did acknowledge, however, that if the parties separated and the veto rights could be quantified, the situation would be different.

Recent Proclamations: Manitoba

- Bill 10, [*The Securities Amendment Act*](#), received royal assent on June 14, 2012. Sections 1, 40, 44, 49(c) and 53 came into force on royal assent and the remainder of the Act will come into force on proclamation. The Act amends *The Securities Act* to allow for the regulation of over-the-counter derivatives. It extends the regulatory powers of the Manitoba Securities Commission to derivatives trading and places restrictions on derivatives traders and advisers. Other changes are discussed in this [explanatory note](#).
- Bill 27, [*The Insurance Amendment Act*](#), received royal assent on June 14, 2012. When it comes into force, upon proclamation, it will significantly amend and modernize *The Insurance Act*. See the [explanatory note](#) for more detail on the changes.
- Bill 29, [*The Contaminated Sites Remediation Amendment Act*](#), received royal assent on June 14, 2012 and will come into force upon proclamation. As indicated in the [explanatory note](#), a significant change is the addition of an "impacted site" designation, which would require the property owner to submit a plan to address the contamination.
- [*The Budget Implementation and Tax Statutes Amendment Act*](#), implementing measures in the 2012 Manitoba Budget and amending other tax and financial legislation, received royal assent June 14, 2012. Some sections came into force on royal assent or are deemed to have come into force previously, and others will come into force on specified future dates.

Federal Legislation

The [*Financial System Review Act*](#), S.C. 2012, c.5 (other than ss. 3, 9 to 11, 46, 54, 56 to 59, 77, 105, 123, 129, 154, 163, 191, 192, 207, 217(2) and 222 to 224) came into force May 24, 2012 by Order in Council P.C. 2012-642. It makes coordinating amendments to a number of other acts, including the *Bank Act*, the *Canada Deposit Insurance Corporation Act*, and the *Financial Consumer Agency of Canada Act*. For further information on the Act see the [backgrounder](#) and [legislative summary](#) and these articles:

- [*Staying the Course: Little Change to Federal Financial Institutions Legislation*](#), Blakes; and
- [*Bill S-5 \(Financial System Review Act\) will restore priority of bank act security over unperfected PPSA security interests*](#), McMillan.

More on Anti-Spam Law

Industry Canada intends to circulate further draft regulations clarifying the obligations and exemptions under CASL this summer. In the meantime the anti-spam updates keep on coming. See for example:

- [Anti-Spam Update - Proposed New Exemptions on the Way](#), Data Governance Law blog, FMC Law; and
- [The New Canadian Anti-Spam Act: What You Need To Know](#), RBS Law.

PIPEDA Report

The Office of the Privacy Commissioner of Canada released its [Annual Report to Parliament 2011 on the Personal Information Protection and Electronic Documents Act](#) on June 5, 2012. The office has also published a [fact sheet](#) on *Accessing Personal Information under the Personal Information Protection and Electronic Documents Act*, a list of [Frequently Asked Questions](#) for individuals, and a [guide for businesses](#).

Business Law Publications

These articles address business law issues:

- Ned Brown has written a [follow up](#) to his [earlier commentary](#) on all obligations mortgages. [Problems With Credit Card Account Interest Obligations](#) deals with whether a credit card creditor can charge post-default interest on credit card debt secured by a mortgage;
- [Restrictive Covenants in the Sale of a Business](#) - reviews how the reasonableness test for restrictive covenants has evolved in Canadian case law;
- [Piercing The Corporate Veil - Recent Developments](#) - discusses two UK decisions which have provoked debate about the scope of the court's ability to pierce the veil of incorporation;
- [Confidentiality and Non-Disclosure Agreements](#) - discusses when non-disclosure agreements are appropriate, what they should or should not cover, and how to address breaches;
- [Canadian Government Proposes Significant Changes To The Environmental Assessment And Regulatory Framework](#) - reviews the changes to environmental assessment proposed in the 2012 Budget Bill C-38.

Upcoming Conferences

Mark your calendars for these upcoming conferences:

[The CCCA Annual Conference](#) (held in conjunction with the Canadian Legal Conference) features many [programs](#) for business lawyers, including sessions on Business Planning for the Legal Department and Gauging the Canadian Business Landscape. The conference takes place August 12-14, 2012 in Vancouver, B.C.

The 3rd annual [Access to Information and Privacy Law Symposium](#), titled Where are we now, and where are we going?, takes place September 14-15 in Ottawa, Ontario. There will be plenary sessions highlighting provincial and international developments in privacy and access law and sessions on access to information.

The [2012 Annual Competition Law Fall Conference](#) takes place September 20-21, 2012 in Gatineau, QC. A detailed agenda and registration form will be posted on the website soon.

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