



In this issue:

1. [Standard Mortgage Charge Terms: MB C.A.](#)
2. [SCC Grants Leave in Joint Account Cases](#)
3. [Estate Can Enforce Settlement Without Court Approval: ON C.A.](#)
4. [Reviewing the *Pointe Gourde* Rule: MB C.A.](#)

1. Standard Mortgage Charge Terms: MB C.A.

In Assiniboine Credit Union Ltd. v. Aviva Insurance, 2006 MBCA 45, the court examines the nature of the standard mortgage clause in a residential mortgage insurance policy. The mortgagor vacated the property without advising the mortgagee, but with the insurer's consent. The property then sustained damage attributable to the vacancy, which was an excluded risk. The mortgagee did not discover the damage until it later took possession of the property and then sought unsuccessfully to recover from the insurer. The court relies upon the decisions of the Supreme Court of Canada in *National Bank of Greece (Canada) v. Katsikonouris* [1990] 2 S.C.R. 1029 and of the Ontario Superior Court in *Healy v. Pilot Insurance Co.*, 2004 CanLII 14781 to find in favour of the mortgagee, quoting from *Healy* as follows:

...the Standard Mortgage Clause merely stated, in simple and untechnical language, that the insurance, as to the interest of the mortgagee, is and shall be in force notwithstanding any act, neglect, etc. committed by the mortgagor. Any other interpretation would distort the plain and ordinary language used in the Standard Mortgage Clause.

2. SCC Grants Leave in Joint Account Cases

The Supreme Court of Canada recently granted leave to appeal in the Ontario Court of Appeal decisions in *Pecore v. Pecore*, 2005 CanLII 31576 and in *Saylor v. Brooks*, 2005 CanLII 39857. These decisions, both referenced in the February 2006, No. 1 issue of *eLaw Property & Succession Update*, addressed the issues of the definition of a joint account and the application of the presumption of advancement. The decision in *Saylor* was issued after the decision in *Pecore* and seems to come to a conflicting result.

3. Estate Can Enforce Settlement Without Court Approval: ON C.A.

In *Wu, Re*, 2006 CanLII 16344, the Ontario Court of Appeal finds that the estate of a person under disability can enforce a settlement reached, but not approved by the court, before the death of the person under disability. The court finds that:

The effect of rule 7.08(1) coincides with *Smallman v. Smallman*, *supra*, to this extent: the party under disability has an agreement from which the opposite party cannot resile and that will become fully operational once approved by the court.... Prior to her death, Rebecca Wu's claim for accident benefits had, by virtue of the settlement, become a contractual right to the agreed amount, contingent upon obtaining the court's approval of the settlement. That contractual right was a chose in action that, by

operation of law, devolved to Rebecca Wu's estate upon her death....Once Rebecca Wu's contractual right passed to the estate, there was no longer a party under disability. Court approval was no longer necessary to protect the interest of the party seeking to enforce the settlement. As the need for court approval disappeared upon Rebecca Wu's death, the minutes of settlement became operational and her estate could enforce the obligation to pay.

Manitoba's [Queen's Bench Rule 7.08\(1\)](#) is quite similar to Ontario's rule.

4. Reviewing the *Pointe Gourde* Rule: MB C.A.

[Carloni v. Manitoba](#), 2006 MBCA 37 is an appeal from an award made by the Land Value Appraisal Commission. The court holds that the common law *Pointe Gourde* rule (the price at which land is to be acquired shall not be inflated by the very project or scheme that gave rise to the need for acquisition) has been codified in [s. 27\(2\)\(b\) of The Expropriation Act](#). In this case, the court dismisses the appeal by the Province, finding that the Commission "set a value on the property that was based on many factors and not on the imminence of development based on the expropriation itself."

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