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1. Removal of Executors: C.A.

In [Bartel Estate, Re](#), 2006 MBCA 139 (CanLII) the court allows an appeal from an order removing one of three executors of an estate. In her will, the testatrix appointed her three sons as co-executors. Two of the sons brought an application to remove the third, and the third, together with his sisters, brought an application to remove the two and appoint the Public Trustee. The court finds that:

The result is a dysfunctional trio which cannot remain. The rancor and expense, which would be certain to follow, could cripple the estate. The clear solution is to appoint a neutral, third party, and the Public Trustee is ideally placed to step in. The interests of the beneficiaries, which should be paramount in these proceedings, are in danger of being overlooked unless such a measure is taken.

2. Keep Your Notes: Q.B.

[Garwood v. Garwood](#), 2006 MBQB 261 (CanLII) deals with a motion by an executor to have the court revoke the grant of probate made on the earlier application by the same executor. The court finds that it has jurisdiction to revoke a grant of probate in the appropriate circumstances but declines to do so on the facts of this case. The decision is noteworthy to estates practitioners for the following comments regarding the lawyer who drafted the will and witnessed its' execution:

Beyond question, it would have been better if the lawyer had retained a copy of Jessie's notes and retained any further notes, if made. If he did not, it would have been wise to record the unusual event and how he responded to it. The Court of Appeal has articulated the importance of making notes relating to competence ([Slobodianik v. Podlasiewicz](#), [2003] M.J. No. 193 at [para.] 32), but there is no issue of that kind here. Without the notes, I have been able to make a finding in this case. The failure to make or retain more notes has no impact on the validity of the will.

3. Advice & Direction on Lapse: Q.B.

[Novotny v. Novotny et al.](#), 2006 MBQB 237 (CanLII) is an application for advice and direction. The testatrix was predeceased by both residuary beneficiaries, and the executor sought the guidance of the court in determining whether the gift of residue lapses, in which case it would be distributed according to the provisions of [The Intestate Succession Act](#) or if it survives, in which case the estate would be divided equally among the three children of the deceased residuary beneficiaries. In finding that this gift lapsed, the court considers the notion of moral obligation as

an exception to the doctrine of lapse.

4. Litigation Guardians: CLE

An upcoming lunch hour CLE program will address the questions that often arise regarding litigation guardians. *Litigation Guardians: Protecting Children and Parties Under Disabilities* will take place in The Law Society classroom at 12:00 p.m. on Wednesday, January 31, 2007. [Click here](#) to register or for further details.

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