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1. Advice & Direction on Homestead Rights

In the decision in [Bankruptcy of Michael Bruce Coates](#), 2007 MBQB 10 (CanLII), the court considers an application for advice and direction re: disposition of the homestead of the deceased bankrupt, and in particular "the homestead rights of Mrs. Coates as opposed to the rights of the trustee...." The court finds that the rights of the trustee are subject to the homestead rights of the widow and states that:

At first appearance it might seem incongruous that the creditors of the estate of a deceased person who had not gone into bankruptcy, or whose estate had not gone into bankruptcy, would be able to claim in priority to the homestead rights of the spouse but would not be able to do so after bankruptcy had intervened. However, the claims of creditors are always compromised in bankruptcy proceedings - sometimes to the point of being virtually extinguished - and the bankruptcy laws are in place to provide for the relief and rehabilitation of insolvent persons.

2. Setting Aside a Power of Attorney

The court in [Dubois v. Wilcosh](#), 2007 MBQB 20 (CanLII) decides an unusual application to set aside a power of attorney where the maker is alive and continues to manage his own affairs. The issue is whether the maker of the document was competent at the time he did so. The application, brought by two of the three attorneys appointed in a Power of Attorney document that was revoked by the later, contested document (which appointed only the third of the original three as Attorney), is dismissed. The case does not contain any ground-breaking law, but is based upon an interesting and unusual set of facts.

3. Fraudulent Misrepresentation Claims

The Court of Queen's Bench has recently issued two claims by purchasers of real property for fraudulent misrepresentation. In both cases, the purchasers sought to rely upon statements made in the vendor's Property Condition Statement. In [Cutts et ux v. Okipnik](#), 2006 MBQB 293 (CanLII), the court finds that the vendor was deliberately deceitful in filling out the Property Condition Statement regarding foundation damage due to water leakage, and that the purchasers relied on those representations to their detriment. In [Wiebe et al v. Loconte et al](#), 2007 MBQB 19 (CanLII), the court finds that the vendor's failure to disclose the presence of mice in the Property Condition Statement was not a positive representation that would warrant a finding of fraudulent misrepresentation.

4. Resources for Wills and Estates Practitioners

Wills and estates practitioners should be sure to review the Winter 2007 (Vol. 6 No. 1) issue of [LAWPRO Magazine](#), entirely available online. Articles of interest include:

- [Wills, powers of attorney and the elderly: A practitioner's perspective](#) by Jan Goddard
- [A detailed discussion of capacity](#) by Judith Wahl
- [The boomer challenge: Are lawyers ready?](#)
- [Wills and estates law: Claims slowly on the increase](#) by Deborah Petch
- [Casebook: Mutual Wills](#) by Debra Rolph

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