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1. Secured Creditors Entitled to CAIS Proceeds: C.A.

The court in [Ronald \(Bankrupt\), Re](#), 2008 MBCA 104 (CanLII) considered whether the rights of secured creditors prevailed over the rights of the trustee in bankruptcy with respect to CAIS (Canadian Agricultural Income Stabilization) Program proceeds paid to the trustee. The court found that:

...nothing has been pointed out, in the Act or elsewhere, that could adversely affect and limit the rights of the Creditors to claim the CAIS Money under their admittedly valid and perfected security agreements. Absent explicit legislative provisions, such as are found in s. 68.1, the interests of secured creditors prevail over those of a bankruptcy trustee, even with respect to the income of the bankrupt. Since the case at bar does not involve an assignment of wages and is not otherwise affected by s. 68.1, it follows that the Creditors prevail over the Trustee, as s. 68 has no application to them. This is not to say that payments from CAIS may not form part of a bankrupt's "total income" for the purposes of s. 68, but that question does not arise in this case, as s. 68 has no application to the Creditors here.

Accordingly, I would hold that the rights and interests of the Creditors by virtue of their security agreements apply to the CAIS Money without reduction as a result of the application of s. 68 of the Act, and in this respect I would allow the cross-appeal.

2. Reasons for Dismissal: *Zenyk Estate*

The Court of Appeal recently issued written reasons for its widely publicized decision in [Zenyk Estate v. Zenyk](#), 2008 MBCA 109 (CanLII). The court dismissed the appeal by the adult son of the deceased from the lower court orders for (limited) relief under *The Dependants Relief Act* and requiring him to vacate the home of the deceased.

3. Insurance Proceeds Excluded from Estate: ON C.A.

In [Madore-Ogilvie \(Litigation Guardian of\) v. Ogilvie Estate](#), 2008 ONCA 39 (CanLII), court considered an application for dependant's relief brought on behalf of the minor children of the deceased. The deceased and his spouse jointly owned a life insurance policy. The deceased made inadequate provision for his dependant minor children who brought applications under Ontario's *Succession Law Reform Act* for dependant's relief from the estate. On first instance, the court

deemed the insurance policy to be part of the estate for the purpose of funding a dependants' support order. On appeal, a majority of the Divisional Court allowed the spouse's appeal in part, excluding the policy from the deceased's estate. The Ontario Court of Appeal dismissed both the appeal and the cross-appeal and the Supreme Court of Canada, on July 31, 2008, refused leave to appeal.

4. LTO Directive re: Homesteads Consents

The Registrar of the Land Titles Office issued a [Directive](#) on August 12, 2008 regarding the requirement for obtaining consent of the spouse of a bankrupt to disposition of homestead property. Based upon the decision in [Bankruptcy of Michael Bruce Coates](#), 2007 MBQB 10 (CanLII), Land Titles now takes the position that the trustee stands in the shoes of the bankrupt spouse and must therefore obtain the consents required pursuant to [The Homesteads Act](#).

5. Continuing Professional Development for Wills and Estates Practitioners

The following upcoming professional development programs may be of interest to lawyers practising in the area of wills and estates:

- [Partnering Towards the Prevention of Abuse of Older Adults](#) is a multi-disciplinary conference on recognizing and preventing elder abuse that takes place at the Victoria Inn, 1808 Wellington Ave. in Winnipeg on October 27 & 28. Sharon Tod of Inkster Christie Hughes LLP and Heather Dixon of Dixon Law Office are among the presenters.
 - [Dealing with Probate Disputes](#) is an online CLE program presented by the Canadian Bar Association's national [Wills Estates and Trusts section](#). It takes place on October 23, 2008 from 12:00 - 1:30 p.m. (CST) and is open to all members of the CBA.
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