



In this issue:

1. [How Not to Administer a Bankruptcy: ON.S.C.](#)
2. [Finding of Trust Overturned: BC.C.A.](#)
3. [Finding Help for Delayed Mortgage Discharges](#)
4. [Know Your Client!](#)
5. [Annotated Will Materials](#)

1. How Not to Administer a Bankruptcy: ON.S.C.

The decision in [Sally Creek Environs Corporation \(Re\)](#), 2008 CanLII 30309 (ON S.C.) provides something of a primer on how trustees in bankruptcy are not to act. In reasons on an application to tax the account of the trustee in bankruptcy, the court reviewed the work of the trustee and ultimately reduced the fees claimed to \$1.00. The case is reported on in the November 14, 2008 issue of [The Lawyers Weekly](#) in the article, [Trustee misconduct: trustees-in-bankruptcy must act fairly or risk fee cuts](#) by Bobby Sachdeva and Michael Nowina and is apparently (and not surprisingly) set for appeal in December.

2. Finding of Trust Overturned: BC.C.A.

In [Armstrong v. Clarke](#), 2008 BCCA 116 (CanLII), Armstrong and Clarke, recently separated common-law partners, owned a family home in joint tenancy at the time of Clarke's death. No will was located for Clarke. Shortly after her death, Armstrong registered the property home in his name, and then sued for a declaration of ownership. Surviving members of Clarke's family counterclaimed for a declaration of trust. At trial, the court found that Armstrong and Clarke were not common-law spouses at the time of Clarke's death and that Armstrong held the property under an express trust for Clarke's daughters, subject to his own life interest. Armstrong's claim for occupation rent was dismissed. The Court of Appeal allowed the appeal in part, finding that there was no basis to declare a trust, but agreeing with the lower court that Armstrong's claim for occupation rent be dismissed. The Supreme Court of Canada refused the [application for leave to appeal](#) on October 30, 2008.

3. Finding Help for Delayed Mortgage Discharges

The Canadian Bankers Association ("CBA") has provided the Federation with [a list of banking officials](#) who can be contacted for assistance in resolving delays on mortgages not discharged after 90 days. The provision of the list on a national basis follows a successful pilot project at the Law Society of British Columbia that was initiated as a result of discussions initiated between the Federation and the CBA. The list can only be accessed via the [password protected area of the Law Society website](#).

4. Know Your Client!

The Law Society's new [Rules on client identification and verification](#) come into effect on December 31, 2008. These Rules can be reviewed on [The Law Society website](#) and will be the subject of the professional development program, [Know Your Client Rules](#) taking place at the Law Society on Monday, November 24, 2008 from 12-1:30 p.m.

5. Annotated Will Materials

The [Law Society of Upper Canada's website](#) provides convenient access to recent CLE materials. One of the packages recently recommended to me is [The Annotated Will](#), produced for a February 21, 2008 CLE program of the same name. Hat tip to Cy Fien of Fillmore Riley for the recommendation!

[Go to the eLaw Archive](#)

The Law Society of Manitoba provides this service solely for the benefit of and to support the competence of its members. Members should exercise their professional judgment in using or adapting any content.