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### 1. Substitution of Debtors the Essence of a Novation: CA

The Manitoba Court of Appeal released its decision in [Wolch v. Ataliotis](#), 2008 MBCA 149 on December 11, 2008. The court rejected the appellants' argument that their debt for the balance of the purchase price on their house was extinguished by a novation agreement to pay the money elsewhere on a short term basis. The court found that, given the finding of the trial judge ([2008 MBQB 147](#)) that the plaintiff never agreed to extinguish the indebtedness of the defendants, the essential elements of a novation were not made out. The court also rejected the appellants' claim for set-off.

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### 2. Ratepayers Entitled to Particulars of Local Improvement Plans: Q.B.

In [Blight et al. v. The Rural Municipality of Portage la Prairie](#), 2008 MBQB 329 the court quashed the approval of a local improvement plan and borrowing by-law on the basis that the RM did not follow the mandatory requirements of s. 315 of [The Municipal Act](#), C.C.S.M. c. M225 in obtaining the approval. The court found that in failing to provide sufficient details of the plan (description of facilities, location, cost, funding, etc.) to ratepayers as required by s. 315 the RM lost jurisdiction to proceed.

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### 3. Another Way to Reduce Probate Fees

As described in a January 2, 2009 Canada Revenue Agency [News Release](#), the tax-free savings account (TFSA) introduced by the Government of Canada in the 2008 Budget came into effect January 1, 2009, allowing Canadians 18 years of age and older to set aside up to \$5000 a year and not pay tax on the income earned or on withdrawals. The Manitoba government has [announced](#) a proposed spring amendment to [The Retirement Plan Beneficiaries Act](#) that would allow a tax free savings account beneficiary to be designated outside a will in the same manner as a beneficiary of an RRSP, RRIF, pension plan or annuity, thereby reducing or avoiding probate fees that might otherwise apply. For further information on tax free savings accounts see <http://www.tfsa.gc.ca/>.

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### 4. Advising Snowbirds on U.S. Condo Purchases

Unseasonably cold temperatures and a devalued American real estate market may mean more clients seeking advice on condominium purchases in Florida. For a short and practical take on

advising such clients see: [U.S. condo purchases: Clients must do their homework first](#) by James Hankins and Kenneth Wenzel, published December 19, 2008 in [The Lawyers Weekly](#).

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## 5. Trust Drafting Tips

For a review of the essential elements of effective trust drafting see [Drafting Trusts That Work](#), an article prepared by Fiona Hunter for CLE BC and recently made available on [Practice Points](#).

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## 6. Mid-Winter Reminder

There is still time to register for the annual [Mid-Winter Meeting](#) of the [Manitoba Bar Association](#) which will take place from January 22 to 24, 2009 at the Hotel Fort Garry. Continuing legal education programs of interest to property and estates practitioners include:

- 9:30 - 11:30 a.m. - *Representations and Warranties: A Guide to Negotiation*; and
- 2:00 - 4:00 p.m. - *Disabled Beneficiaries - Maximizing Their Benefits*.

All Mid-Winter meeting programs will be held on January 23rd, 2009.

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