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In This Issue

Tenancy Appeals

Not All Church Property Subject to The Religious Societies' Lands Act: MBQB

"Naked Cash Grab" Condemned: ON S.C.

More on the New Rules for Wastewater Management

Best Practices for Mirror Wills

Winter CPD: LSM

STEP Education Sessions

Tenancy Appeals

The Manitoba Court of Appeal recently decided three cases involving landlord and tenant disputes. In [4266715 Manitoba Ltd. v. Major Management Corp.](#), 2009 MBCA 118 the court upheld the motion judge's order granting summary judgment to the plaintiff landlord. The motion judge's conclusion (that the tenant had no reasonable prospect of success in convincing a trial judge to conclude that six to seven months of exterior repairs to its premises was unreasonable) was entitled to deference.

In both [Van de Spiegle v. Talbot](#), 2009 MBCA 119 and [Manitoba Housing Authority v. Savage](#), 2009 MBCA 117 the court denied leave to appeal decisions of the Residential Tenancies Commission. In each case the applicant failed to establish the question of jurisdiction or law required to appeal a decision of the Commission under s.175 of [The Residential Tenancies Act](#).

Not All Church Property Subject to *The Religious Societies' Lands Act*: MBQB

In [Chanh Dao Vietnamese Buddhist Association of Manitoba Inc. v. Manitoba Korean Presbyterian Church Inc.](#), 2009 MBQB 307 the court considers whether the provisions of *The Religious Societies' Lands Act* apply to a contract for purchase and sale of a piece of property owned by the defendant church. The court finds that not all lands held by a religious society are subject to the Act since the legislation is permissive rather than mandatory. In this case, where the defendants had never appointed trustees of the land under the Act, they could not assert the protections of the Act to prevent the sale. Given that the building in question was no longer being used as a place of worship, specific performance of the contract was an appropriate remedy.

"Naked Cash Grab" Condemned: ON S.C.

Estates lawyers in Ontario are abuzz about the decision in [Miksche Estate v. Miksche](#), 2009 CanLII 60409 (ON S.C.), in which Justice D. M. Brown roundly condemns a lawyer and law firm for claiming more than one million dollars in fees against the estate and the primary beneficiary. The judge finds that the law firm "crassly put their financial interests ahead of the interests of a former client and attempted to perpetrate a naked, cash-grab" (para. 75), conduct both "scandalous and in breach of their duties as officers of the court" (para.2). A future hearing will determine whether the lawyer and his firm will have to pay the other parties' costs. Not surprisingly, the lawyer plans to appeal. The *Law Times* article [Firm attempted 'naked cash grab,' judge rules](#) discusses the decision in more detail.

More on the New Rules for Wastewater Management

Lawyers who act on the sale of property outside of areas with municipal sewage collection systems continue to have questions about Regulation 156/2009, the [Onsite Wastewater Management Systems Regulation, amendment](#) referred to in [October's eLaw](#) and the [December 2009 Communiqué](#). The new regulation prohibits the installation of sewage ejectors and requires the decommissioning of existing ones when property is sold or subdivided. Two recent papers by Ned Brown review the requirements and set out a number of questions which lawyers should consider when advising clients. See [New Provincial Government Rules for Wastewater Management Systems](#) and [Further Thoughts on the New Provincial Rules for Wastewater Management Systems](#).

Best Practice for Mirror Wills

The *Lawyers Weekly* article [How to handle joint retainers for wills](#) by Suzana Popovic-Montag discusses the sometimes contentious nature of joint estate planning and the ethical considerations and potential for solicitors' negligence it raises. Mirror wills are particularly problematic, as the risk of a future conflict of interest between the clients is high. The article contains a checklist for best practices when drawing up mirror wills under a joint retainer and recommends documenting these practices in both notes to the file and the reporting letter to the clients. It also includes a list of questions to consider before agreeing to act on a joint retainer. This subject is dealt with in Chapters 4 and 5 of our [Code](#) and in the 2002 Practice Notice on [Spousal Wills](#).

Winter CPD: LSM

The Law Society is presenting the following continuing professional development programs on property and estates topics this winter:

[Annual Hot Topics in Real Estate Practice](#) - a half-day afternoon program on January 14, 2010 examining the latest issues facing real estate practitioners. Topics to be discussed include: revenue property issues, internet lenders, condominium and title insurance issues, new sewage ejector regulation and Land Titles Office concerns.

['Til Death Do Us Part and Beyond](#), a joint Family Division Judges, LSM, and MBA program exploring the intersection of family law and death. Topics to be covered include: agreements contemplating death, resulting trust and the presumption of advancement, and grandparent access and guardianship. The program will be held March 5, 2010 at the Radisson Hotel. Early bird registration ends January 15, 2010.

For more information or to register contact the Education and Competence Department.

STEP Education Sessions

The [Society of Trust and Estate Practitioners](#) (STEP) is offering a full slate of [educational sessions](#) this winter, including:

- [Corporate Trustees](#) - January 21, 2010
- Common Drafting Errors in Wills - February 18, 2010
- A Potpourri of Legal Issues - March 18, 2010 and
- CRA Roundtable - May 20, 2010

Programs are open to both members and non-members. For further information or to register online see STEP's [Winnipeg Branch](#).

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