



## eLaw - Property & Succession Update

February 2010 - No. 42

ISSN 1916-3894

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### Dispensing With Compliance in the Interests of Justice: MBCA

In [\*Triple D Land & Cattle Inc. v. Dyrda\*](#), 2010 MBCA the Court of Appeal upheld a lower court order for possession of farmland under s. 9 of [\*The Family Farm Protection Act\*](#), C.C.S.M., c. F15, despite the fact that the applicant had used a notice of motion rather than an originating document to commence the proceedings. The court applied [\*Queen's Bench Rule 2\*](#), which gives judges the discretion to dispense with compliance with any rule in the interests of justice. Although it was not necessary to do so, the court went on to consider the applicant's argument that the motions judge had the power under s.9(8) of the Act to grant the relief sought if it was just and equitable to do so. The Court of Appeal disagreed with this interpretation, however, finding that the granting of relief contemplated under s. 9(8) pertains solely to relief sought under the leave application.

### Scrutinizing the Actions of Attorneys and Committees: MBQB

The court makes some instructive comments concerning the role of a power of attorney and the proper criteria in choosing a committee in [\*E.B. v. S.B. and B.K.\*](#), 2010 MBQB 15, a case in which two sisters battle over the care and property of their mentally incapacitated mother. The court terminates the enduring power of attorney jointly held by one sister and an uncle, but rejects the application of the other sister to be appointed committee, holding that it is in the mother's best interests to appoint the Public Trustee. The court has this to say about the duty to account:

Although B.K. has provided to N.S. (the uncle) some statements and information, she has not provided a formal accounting or a statement of receipts and disbursements, and N.S. has not requested and does not want one. In fact the evidence suggests that N.S. is not interested in receiving or obtaining a proper accounting. In my view, this is unacceptable for a number of reasons, not the least of which is that the terms of the Power of Attorney

(and S.B.'s wishes) are not being met. The purpose of the accounting is to provide some assurance that S.B.'s estate is being properly administered. The rationale for the requirement to account is to scrutinize the attorney's handling of an incompetent individual's assets, thus protecting him/her from negligence or abuse of power by the attorney and to ensure that the attorney has acted in accordance with his/her fiduciary or other duties mandated by statute. (para. 40)

Educating clients about the attorney role and responsibilities will help them to avoid this kind of outcome. For a review of the proactive steps to take with power of attorney clients, sign up for the upcoming program [Powers of Attorney Accountability: A Litigator's Perspective](#), described below.

## Proposed Zoning Memorandum By-law Delayed

The executive policy committee of the City of Winnipeg has delayed its decision on the proposed [by-law](#) requiring sellers and buyers of real estate to obtain zoning memorandums until March 17, according to the Winnipeg Free Press article [EPC delays decision on new city real estate fees](#), posted online February 17, 2010. "Members of EPC are divided about the bylaw because some feel it is not fair to create a bylaw that technically requires buyers to spend the fees but actually puts the onus on people selling homes" and the delay will allow a city lawyer to look at the wording, according to the author of the article, Bartley Kives. Real estate practitioners should review the [memo](#) prepared by the chairs of the Real Property section of the Manitoba Bar Association when considering how the by-law will affect residential real estate conveyancing.

## Reading Material

The following materials contain articles on real property and estates topics:

The CLE BC [Practice Points](#) article [Residential Real Estate-Pitfalls and Tips](#) is a primer on how to avoid the common mistakes in real estate transactions that may lead to insurance claims.

[Sage Advice](#) - the February 2010 newsletter of the Elder Law section of the Canadian Bar Association contains articles related to the theme Services to Seniors: Where Can We Turn and What Needs to be Done.

## Upcoming Education Opportunities

The following Law Society CPD programs may be of interest to wills and estates practitioners:

- ['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.
- [Powers of Attorney Accountability: A Litigator's Perspective](#) - Presenters Dana Nelko and Anita Southall will examine how courts have dealt with power of attorney cases and the proactive steps practitioners can take to help attorneys carry out their duties in this lunch program scheduled for May 6, 2010.

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

- The [Society of Trust and Estate Practitioners](#) (STEP) is presenting the programs A Potpourri of Legal Issues (March 18, 2010) and CRA Roundtable (May 20, 2010). See the [Winnipeg Branch](#) section of the STEP website for further information.
- And, mark your calendars now for the Canadian Bar Association online program [Everything Old is New Again: Troubleshooting in a Wills and Estates Practice](#) to be presented by local lawyers Jennifer Pfuetzner and Cynthia Hiebert-Simkin on April 21, 2010

## Spring Conferences

The Canadian Bar Association is presenting two conferences that may be of interest to solicitors this spring: [Elder Law in the New Decade Conference 2010](#) on March 26, 2010 in Halifax and [2010 National Charity Law Symposium](#) on April 30, 2010 in Toronto. See the conference brochures for further details and to register.

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