



## eLaw - Property & Succession Update

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### No Inherent Jurisdiction to Vacate Caveats: MBCA

The court has no inherent jurisdiction to vacate an unpaid vendor's caveat according to the Court of Appeal in [\*Bojkovic v. Rentz Bros. Inc. et al.\*](#), 2010 MBCA 17, even on the condition that monies be paid into court as substitute security pending trial. The validly registered caveat in this case was the subject of pending proceedings in court. *The Real Property Act* sets out a regime by which a caveat may be discharged. As noted by the court, "(t)he legislature did not see fit to provide the court with a broad discretion to discharge a caveat. This is in contrast to other circumstances where it does provide the court with broad discretion to order the discharge of other encumbrances against title upon payment into court of alternate security." (para.69)

### Documenting Property Deals

Negotiating real property agreements involving third party or future rights is tricky, as noted in [\*When Part Performance Can Make an Unexecuted Agreement Binding\*](#), a recent Borden Ladner Gervais publication. The article, and a subsequent variation ([\*When are unexecuted agreements binding?\*](#) published in *The Lawyers Weekly*), concern [\*Erie Sand and Gravel Ltd. v. Tri-B Acres Inc.\*](#), 2009 ONCA 709. In *Erie* the court enforced an unexecuted purchase agreement due to partial performance of the contract by the parties, despite the Ontario *Statute of Frauds*' requirement that any agreement to transfer land must be written and executed. The article sets out tips to avoid a finding that there has been part performance in relation to dealings with land, practical advice that applies to all transactions.

### Developments in Condo Law

The recent *Canadian Lawyer* article [Condos are Hot, Hot, Hot](#) surveys the booming condo development market across Canada and notes legislative changes in B.C., New Brunswick, and Nova Scotia, and proposed changes in Alberta and Ontario. Most changes are consumer-protection oriented, including enhanced disclosure requirements and increased government oversight. Manitoba is considering similar modernization of its legislation, as noted in the November 30, 2009 [throne speech](#). Also noted in this speech is the government's intent to work with homebuilders to develop a *New Home Buyers' Protection Act* to provide for warranties that assure purchasers their new residences will not require major repairs shortly after purchase.

## Input on Neufeld Report

Lawyers involved in real estate conveyancing are invited to join a consulting group to provide input to Securities Commission staff on the recommendations contained in John Neufeld's recently released report on [Vendor Disclosure in Real Estate Transactions](#). As the Commission expects to report to the government in mid-April, interested practitioners should contact Edward D. (Ned) Brown at 956-3503 or e-mail [brown@pitblado.com](mailto:brown@pitblado.com) as soon as possible.

## Property Registry Notice

The Morden Land Titles Office has returned to its original location at 351 Stephen Street in Morden effective March 1, 2010, as announced in this [Property Registry notice](#) dated February 25, 2010.

## Zoning Memo Bylaw Update

The executive policy committee of the City of Winnipeg has [postponed](#) once again its decision on the proposed new bylaw requiring sellers to obtain zoning memos. The committee agreed that more time was needed to review the amended bylaw, which was changed to address concerns raised by realtors and real property lawyers.

## Upcoming Education Programs

Law Society of Manitoba

[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.

[Caveat Emptor and the Pros and Cons of Great Sellers' Disclosure](#) - Join an interactive discussion with presenters John Neufeld and Robert Tyler about what the real estate industry has been doing with respect to sellers' disclosure. This lunch hour program takes place May 13, 2010. Contact [Jennifer Lavallee](#) in the Education and Competence Department to register.

MBA/CBA

The Real Property section of the MBA is hosting an information session on [What Manitoba Surveyors do and how they can help you](#) at 5:00 p.m. on April 8, 2010 at Pitblado LLP.

[Everything Old is New Again: Troubleshooting in a Wills and Estates Practice](#) - This CBA online program by local lawyers Jennifer Pfuetzner and Cynthia Hiebert-Simkin takes place April 21, 2010.

## Spring Conferences

It's not too late to register for these CBA conferences: [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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