



eLaw - Property & Succession Update

April 2010 - No. 44

ISSN 1916-3894

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Power of Waiver Defeats Sanctity of Condition Precedent: MBQB

In [*Arero Corporation v.G & D Erb Holdings Ltd. et al.*](#), 2010 MBQB 49 the court rejects the plaintiff's arguments that the law of true conditions precedent is a developing area that should not be dealt with on a summary basis and that an unfulfilled condition precedent entitled it to the return of monies paid pursuant to an amending agreement in a failed land transaction. The court found that the law governing true conditions precedent has now been established for a number of years and, accordingly, it can be the subject-matter of an application for summary judgment. The terms of the offer clearly stated that the conditions were for the benefit of the purchaser and that the purchaser maintained the right of waiver. The court concluded that "the inclusion of a reservation of a power of waiver defeats the sanctity of a condition precedent." The defendant's application for summary judgment was successful except on the issue of the plaintiff's claim for relief from forfeiture on the payment of \$150,000.00.

Estate Executor in Conflict of Interest

The court suspended an executor's right to act until the disputed issues with respect to her family property claim against the estate were resolved in [*Stern v. Stern*](#), 2010 MBQB 68. The executor and her husband had separated but not concluded their family property proceedings at the time of his death. The husband had not changed his will. The court accepted the argument of the other executors that pursuing the claim against the estate put the former wife/main beneficiary in a conflict of interest. It concluded, however, that the onus to prove that removing her as an executor was necessary had not been met and that the deceased's wishes (reflected in the unchanged will) would be better respected by a suspension.

Is Your Client Purchasing a Cemetery?

Lawyers who act on the purchase or sale of rural land may be interested in Ned Brown's latest post on PitbLAWg, [Do you have dead bodies on your land?](#), which points out that current Manitoba legislation imposes obligations on owners of land on which human remains have been buried. Since older burial sites may no longer be marked, both vendor and purchaser should be made aware of the possibility that human remains are buried on the land and of the land owner's obligations under [The Cemeteries Act](#).

Avoiding the Turmoil of Contested Guardianship Applications

The key to avoiding the expense and turmoil of a contested guardianship proceeding is to involve the incapable person in the negotiation, according to author Marshall Swadron in [How to survive a contested guardianship proceeding](#). Although focussed on Ontario law, the *Lawyers Weekly* article provides practical advice on overcoming the family failings (lack of planning, bad communication) that typically lead to these disputes.

May CPD: LSM

[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 program takes place May 13, 2010 from 12:00 noon - 1:30 p.m.

[Trust Conditions](#) - Herb Peters and Jeff Shypit will discuss the governing principles of trust conditions, common problems, and the consequences of lawyers breaching trust conditions and undertakings at a lunch hour program for lawyers and support staff on May 19, 2010.

Bar Association Programs

[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.

Rob Giesbrecht will present a Condominium Law and Practice Update at the next meeting of the [Real Property Law](#) section of the Manitoba Bar Association, starting at 5:00 p.m., April 27, 2010 at Pitblado LLP.

Charity Law Conference

The [2010 National Charity Law Symposium](#) is being held on April 30, 2010 in Toronto. See the conference brochures for further details and to register.

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