



eLaw - Property & Succession Update

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**eLaw Property & Succession Update will not be published in July and August.
Watch for the next issue in your Inbox in September 2010.**

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Testator's Clear Intentions Respected: MBCA

The Court of Appeal upheld the motion judge's interpretation of an unclear provision in a will in [*Eliuk Estate, Re*](#), 2010 MBCA 58. The clause concerned the family home which was worth \$60,000 at the time the will was made, but \$170,000 by the time of death. The clause gave a right of first purchase to one son who had helped maintain the home and \$10,000 each to three other beneficiaries. The clause did not specify the purchase price, but the motions judge found that the only logical conclusion was that the testator intended the son to get the home for \$30,000. The Court of Appeal agreed with the conclusion that the testator obviously intended a preferential benefit to fall to the son with respect to the disposition of the house, either by giving him the right to purchase it at less than market value or by providing him with 40% of the proceeds of the sale were it to be sold to a third party.

No Moral Obligation to Discharge a Debt: MBQB

In [*Estate of Dolly Wonsch*](#), 2010 MBQB 122 the court considers whether to prevent the lapse of a gift by applying the fourth exception to the doctrine of lapse (that the gift fulfills a moral or legal duty). The beneficiary, who died six days before the testator, was the deceased's live-in caregiver and friend. Her two children claimed to be the heirs to the residue of the estate, which would otherwise go to the deceased's grand niece under *The Intestate Succession Act*. The court found no evidence that the deceased wished to provide for her beneficiary's children in either the will or codicil, or in the manner in which her house was transferred. The gift therefore lapsed.

Sewage Ejector Update

As [announced](#) May 31, 2010 the Province has finalised its amended sewage ejector rules. [Regulation 60/2010](#), registered May 25, 2010, provides new options for homeowners with existing sewage ejectors who plan to transfer or subdivide their property. Rural homeowners may now [apply](#) to retain an existing sewage ejector following property transfer or subdivision, provided the sewage ejector is: not located within an environmentally sensitive area; located on a minimum of 10 acres; and in compliance with all other regulatory requirements. Homeowners selling their property may also apply to transfer the responsibility of phasing out the ejector to the new homeowner or to [extend the time](#) available for the phase-out. For further information see the Manitoba Conservation [website](#) or this list of [frequently asked questions](#).

Non-Resident Distributions Simplified by *Income Tax Act* Changes

Changes to the *Income Tax Act* proposed in this year's federal budget will simplify distributions to non-residents by eliminating the s.116 requirements in most cases and are good news for estates practitioners according to the author of [2010 federal budget: Section 116 changes announced](#). The article explains how the requirement to obtain a s.116 certificate of compliance or file Form T2962C will only apply if the interest in the trust qualifies as a "taxable Canadian property" under the new definition. Though the new rules were intended to take effect as of March 4, 2010, they are not yet law and the author recommends exercising caution when making distributions in the meantime.

Wills Concordance Updated

The Wills, Estates and Trusts section of the Canadian Bar Association has updated its [Succession Law: Tables of National Concordance](#). The tables are intended for use by CBA members in working with the varying laws across Canada relating to estate and trust planning and administration. There is a [cross-jurisdictional table](#) comparing requirements in all Canadian jurisdictions and separate, more detailed, tables for all provinces and territories.

Recommended Reading

The May 2010 edition of [The Last Word](#), the CBA [Wills, Estates and Trusts](#) section newsletter, contains articles on how Indian status affects estate planning and will drafting, the extent of the cy-prés doctrine, and s.116 of the *Income Tax Act* (see above).

The article [The risks of mortgage assumption](#) from the June 2010 *Canadian Lawyer Inhouse* magazine, summarizes the issues purchasers and vendors should consider in sales involving mortgage assumptions.

The May/June 2010 edition of *LawPRO Magazine* offers these practice tips for avoiding claims in estates and property practices: [Avoiding confusion\(and claims\) when making charitable bequests: and Common real estate pitfalls to avoid](#).

Powers of Attorney: Brandon

Last fall's popular CPD program, [Improving Your Powers of Attorney](#), will be repeated in Brandon on June 21, 2010, from 1:00 - 3:00 p.m. at the Victoria Inn. Presenters Heather Dixon and Cynthia Hiebert-Simkin will cover current issues affecting this growing area of practice and offer practical tips for improving your powers of attorney.

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