



## eLaw - Property & Succession Update

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### City Council Within Its Jurisdiction in Delisting Historical Property: MBQB

The court ruled in favour of City Council's decision to delist an Osborne Village house as an historical property in [Lehn et al. v. The City of Winnipeg](#), 2010 MBQB 175. Among other things the court found that City Council did not act outside the scope of its jurisdiction or *ultra virus*, or in bad faith in delisting the property, nor did it fail to take into account relevant or appropriate factors in forming its opinion to delist.

### Contemplation of Marriage Declaration Requirements: BCCA

In [MacLean Estate v. Christiansen](#), 2010 BCCA 374 the court upheld the validity of a will which was signed and made in contemplation of a subsequent marriage, but did not contain the required declaration under the B.C. *Wills Act*. Without such a declaration a will is revoked pursuant to s.14 of that Act. Manitoba's Act has a similar provision. In this case a solicitor prepared the will with the knowledge that the testator intended to marry, but neglected to include the customary declaration. The court found that a declaration need not be a formal statement, but the whole will must be made in contemplation of marriage. In this case, the use of the word "spouse" in the will, the establishment of a spousal trust, and overwhelming extrinsic evidence all supported the construction that the will was made in contemplation of marriage. The solicitor was ordered to indemnify the estate for all costs so that the estate did not bear any financial burden from the solicitor's admitted error.

### New Legislation

[Bill 35](#), *The Condominium Amendment Act (Phased Condominium Development)*, received royal assent and came into force June 17, 2010. It amends *The Condominium Act* to facilitate

the development of condominium projects in phases. It is part of the first phase of a comprehensive review of *The Condominium Act* and part of Manitoba's new plan for stronger consumer protection.

The Province has [announced](#) that it is drafting a new Condominium Act and is seeking input on the proposed changes by October 22. The changes are outlined in the September 2010 [discussion paper](#) issued by the minister.

Parts of [The Residential Tenancies Amendment Act](#), S.M. 2009, c. 10, assented to June 11, 2009, were proclaimed and came into effect June 30, 2010, requiring landlords who wish to renovate a suite for condominium conversion purposes to give existing tenants five months' notice to vacate instead of three.

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## 2011 Rent Guideline Set

The 2011 provincial rent guideline has been set at 1.5 per cent as [announced](#) September 7, 2010 by Manitoba Family Services and Consumer Affairs. The new guideline, which applies to most residential properties, takes effect January 1, 2011.

Further information on the guidelines is available on the [Residential Tenancies Branch](#) website.

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## How the Aging Population is Impacting Estate Litigation

These two papers, from the CBA's 2010 Canadian Legal Conference, address the emerging issues in family, estate and elder care law as late in life marriages become more common:

[Late-in-Life Marriages: Love, Heartbreak, and Family Law Matters](#) by Karon C. Bales, examines how Canadian courts have dealt with such issues as predatory marriages, testamentary capacity, misuse of powers of attorney by family members and previous marriages and prior obligations.

[The 'Predatory Marriage', its Consequences, and Costs in Capacity Proceedings](#) by Kimberly Ann Whaley and Amy Cull, takes an in-depth look at the growing phenomenon of predatory marriages. It reviews the law on capacity to marry and argues that the test is much less stringent than the one that is used to determine testamentary capacity or capacity to manage property. The author concludes that until the test is refined to take into account the financial implications of marriage, those with diminished capacity will be vulnerable to exploitation through marriage.

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## Charities Law

The July 2010 issue of [Charity Talk](#), the CBA National Charities and Not-for-Profit Law section newsletter, contains several articles that may be of interest to solicitors, including a bulletin on the [Federal budget 2010 - amendments to the disbursement quota regime](#), an [HST primer for charities and not-for-profits](#), [A new area of liability for directors of a charity](#), and a [CRA update](#).

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## Fall CPD Programs: LSM

Be sure to register soon for these upcoming continuing professional development programs offered by the Law Society this fall:

[Lawyers Acting as Executors and Trustees](#) - Presenters Jack Cram, Robert Fabbri and Cynthia Hiebert-Simkin will review the new Law Society of Manitoba statement of principles concerning lawyers acting as personal representatives in this half-day program taking place on September 29, 2010 from 1:00 - 4:00 p.m. in the Law Society classroom. Topics to be covered include the professional obligations of the dual role of lawyer/personal representative, the rules and case law, and fees and statements of account.

[Writing to Win: Results-Oriented Writing for Busy Solicitors](#) and [Speaking to Win](#) - The Law

Society is pleased to have nationally acclaimed lecturer and writer Steven Stark present these two programs on October 20, 2010. Registrants can attend either the morning or afternoon program, or register for both at a discount. Further savings can be had by registering by the early bird deadline of September 20, 2010.

[Estate Planning for Common-Law Couples & Blended Families](#) - Estate planning strategies must be crafted to address the requirements of different family structures. Presenters Jennifer Pfuetzner and Christine Van Cauwenberghe will review the issues to keep in mind when creating estate plans for common law couples or blended families, and look at spousal trusts and new investment products at this half day program on November 4, 2010 from 1:00 - 4:00 p.m. in the Law Society classroom.

## STEP Programs

The [Winnipeg branch](#) of STEP, the [Society of Trust and Estate Practitioners](#), offers a full slate of [educational sessions](#) to members and non-members. The next program, [Cross Border Issues](#), takes place September 20, 2010. Upcoming sessions include: Data Gathering, Business Succession Planning, Segregated Funds, Dealing with Loss of Capacity, Case Studies in Personal Estate Planning, Estate Planning Agreements, and a CRA Roundtable.

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