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Limited Interplay Between *The Cooperatives Act* and *The Residential Tenancies Act*: MBCA

In [*Willow Park Housing Co-op v. Walker*](#), 2010 MBCA 106, the Court of Appeal denied leave to appeal an order of possession granted by a residential tenancies officer to a cooperative for a housing unit occupied by applicants whose membership in the cooperative had been terminated. The court found that given the limited interplay between *The Cooperatives Act* and *The Residential Tenancies Act*, the director of the Residential Tenancies Branch did not have the jurisdiction to review the decision by the directors of the cooperative to terminate the membership.

Right to Notice at the Heart of Property Ownership: MBQB

The requirement to give reasonable notice to the property owner of a municipal inspection is not a mere technicality, according to the court in [*Perchaluk v. Town of Roblin*](#), 2010 MBQB 238, and breach of that right cannot be described as trivial. The notice provisions of s. 239 of *The Municipal Act* "are a prerequisite which must be complied with before entry is permitted. By failing to give notice before entering onto the plaintiff's property, the inspector acted without jurisdiction when conducting his inspection" (an unlawful trespass), and the municipality could not rely on his report to justify their order of demolition. The court ordered the municipality to reimburse the property owner for the costs of the demolition. No damages were awarded for loss of the valueless building.

Onus on Mortgagee to Prove Status of Mortgage: MBQB

The court grants an order under s.106 of *The Real Property Act* to extinguish a mortgage in [Abalon Holdings Ltd. v. 74486 Manitoba Ltd.](#), 2010 MBQB 251. The applicant was able to establish that there had been no payments on the mortgage within the 10 year period set out in s.21(1) of *The Limitations Act*, and the mortgagee was unable to establish that the limitation period had been stopped (by the filing of a notice of exercising power of sale) or renewed (by a transfer of the property) during that period. The case contains an interesting discussion as to when the filing of a NEPS will stop the limitation period from running and as to who has the onus to establish whether a default has been remedied. On the latter point the court concluded that

...considering the unusual length of the current limitation period and the rationale underlying limitation periods, ...it is reasonable to place the ultimate onus on the mortgagee to satisfy the court that it should be allowed to enforce the mortgage more than ten years after default. (para. 35)

***Forum Non Conveniens*: MBQB**

In [Henry v. Henry](#), 2010 MBQB 267 the court reviews the factors relevant to an assessment of the *forum conveniens* to hear an action concerning the net proceeds of an estate probated in Jamaica and involving parties in England, Canada, the United States and Jamaica. The court concludes that Manitoba "is at least as convenient a forum as Jamaica, and...where no one forum is most appropriate, the domestic forum wins by default."

Wastewater Management Update

Edward D. (Ned) Brown has prepared a third paper on the provincial government rules for wastewater management systems. In [Changes and Clarifications to Rules Regarding Sewage Ejectors and Wastewater Management Systems](#) he reports on the changes and clarifications made to the Manitoba Wastewater Regulation as amended by Manitoba Regulation 156/2009 and Regulation 60/2010.

MLRC Report on Specific Performance

In a recent informal report to the government concerning the remedy of specific performance in land purchase and sale agreements the Manitoba Law Reform Commission has recommended changes to *The Law of Property Act*. The changes are designed to offer further protections to land purchasers in Manitoba in light of recent cases in other jurisdictions which have limited the remedy. See, for example, [Semelhago v. Paramadevan](#), [1996] 2 S.C.R. 415, [1244034 Alberta Ltd. v. Walton International Group Inc.](#), 2007 ABCA 372, and the March 2009 Alberta Law Reform Institute [report](#) *Contracts for the Sale and Purchase of Land: Purchasers' Remedies*.

New Manitoba *Code of Professional Conduct*

The Benchers have approved a new [Code of Professional Conduct](#) which will come into effect on January 1, 2011. The new *Code* provides a clear, concise and updated set of rules by which lawyers will be expected to conduct themselves. All members of the profession will be required to complete some form of training on the *Code* within one year of its implementation. The Law Society will offer free training in a number of formats, including in person training, online self-study, and teleseminars. The next scheduled [teleseminar](#) will take place on January 25, 2011.

Winter CPD: LSM

The Law Society is presenting the following continuing professional development programs on property and estates topics this winter:

- [Update from the JADR Review Committee](#) - The Judicially Assisted Dispute Resolution Review Committee has completed its review of the JADR program and will present its results at this lunch time session on January 13, 2011 at the Law Society classroom. Join Justices Suche, Little and Spivak for this informative overview of their recommendations.
- An experienced panel of real estate practitioners will discuss commercial deals, new construction issues, and the meaning of "subject to lawyer's approval" in [Annual Hot](#)

[Topics in Real Estate](#), to be held February 8, 2011 from 1:00 - 4:00 p.m. in the Law Society classroom. The panel will also update attendees on last year's hot topics, including revenue properties, title insurance, condominium issues and the onsite wastewater management regulation. [Register](#) soon to guarantee your spot.

- [Gain the Edge! Negotiation Strategies for Lawyers](#) - This day long seminar, presented by Martin Latz, negotiation expert and author of *Gain the Edge! Negotiating to Get What You Want*, received rave reviews when it was presented in 2009. Attendees will learn to approach negotiations with a strategic mindset, a critical skill that benefits inexperienced and seasoned negotiators alike. The program will be held February 11, 2011 at the Law Society classroom. [Register](#) by January 15th to take advantage of the early bird discount.
- [Les Mauvais Traitements Envers Les Aînés](#) - French speaking lawyers will be interested in this free program on elder abuse, to be held February 18, 2011 from 1:00 - 4:00 p.m. in the Law Society classroom.
- Save the date to register your assistant for the upcoming program Real Estate for Support Staff which will be held March 3, 2011. Details to be announced soon.

MBA Mid-Winter 2011

The 2011 [Mid-Winter Meeting](#) will take place January 20-22, 2011 at the Fairmont Winnipeg, with professional development programs on January 21. Topics that may be of interest to property and estates lawyers include:

- Removing Personal Representatives: A Manitoba Perspective - presenters will examine recent developments in the law regarding removal of personal representatives from 2:00 - 4:00 p.m.;
- An Overview of Cost Awards - this refresher on cost awards is timely given the changes to the tariff coming into effect January 2011. This program also takes place from 2:00 - 4:00 p.m.

Contact the [Bar Association](#) for further details.

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