



## eLaw - Property & Succession Update

February/March 2011 - No. 51

ISSN 1916-3894

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### No Recourse for Estate of Murdered Insured: MBCA

There is no legal basis upon which the estate or beneficiaries of a murdered man could be entitled to a claim against land held by the wife of the alleged murderer (the man's sibling) according to the court in [\*Labossiere-Clark v. Wood\*](#), 2011 MBCA 7. Substantial mortgages on the land (jointly owned by the deceased and his sister-in-law) were discharged by the deceased's insurer, engaging the principle that a wrongdoer cannot benefit from his own wrongdoing. The court found, however, that while a constructive trust may be imposed on the property of a wrongdoer to prevent unjust enrichment from wrongful conduct (not yet proved here), in this case the estate could not claim such a trust since it had not been deprived of a benefit. The court also found that neither the equitable remedy of resulting trust nor proceedings for wrongful death under *The Fatal Accidents Act* applied.

### RTB Has No Jurisdiction to Hear Appeals From Decisions Under ***The Cooperatives Act***: MBCA

Confirming the limited jurisdiction accorded to the Residential Tenancies Branch in dealing with matters that derive from *The Cooperatives Act* a third time is unnecessary said the Court of Appeal in [\*Westboine Park Housing Co-op Ltd. v. Wapemoose\*](#), 2011 MBCA 9. The court denied the applicant leave to appeal an order for possession of his housing unit granted by the Branch after the cooperative terminated his membership. The court stressed that "(i)f one is aggrieved with a decision of a cooperative made under *The Cooperatives Act*, the remedy is not to challenge the decision of the Branch made under the Act, but to seek judicial review of the cooperative's decision..." (para.14).

## Recipient of Gratuitous Gift Must Rebut Presumption of Resulting Trust: MBQB

The court examines how the law of resulting trust, undue influence and fiduciary relationship apply to a \$100,000.00 investment made in the name of a home care worker by her elderly client in [\*Plishka et al. v. Wiebe\*](#), 2011 MBQB 23. The client controlled the investment through a power of attorney during her lifetime and received the interest on it, but the worker assumed the tax liability. The worker claimed that the now deceased client had promised the money would be hers when the client died. The executors challenged title to the investment, arguing that the circumstances of the transfer gave rise to a resulting trust in favour of the estate. They also argued that the home care worker exercised undue influence over the deceased and that WRHA policies forbidding the acceptance of gifts from clients suggested a fiduciary relationship which the worker had violated. The court rejected the latter argument, finding that the WRHA rules do not automatically confer a fiduciary relationship. Given the deceased's reputation for being shrewd, independent and strong-willed, the court also had no concern about undue influence. The court ruled in favour of the estate, however, finding that the worker had failed to demonstrate that a gift was intended, as required by the presumption of resulting trust.

## Charitable Intent Clear: MBQB

The court rejects an interpretation of a will clause which would result in the lapsing of a charitable gift by operation of the doctrine of ademption in [\*Estate of W. J. Halliday\*](#), 2011 MBQB 35. The clause directed that the proceeds of the sale of the deceased's house and land would be paid to several named charities or, should the land be sold before death, that each charity would receive \$10,000. Prior to her death the testatrix transferred the property to her son/executor. He argued that the charitable gift was a specific bequest which failed when the specified property was no longer part of the estate, and that, since the property was not "sold" as required by the clause, the \$10,000 gift also failed. The court disagreed with the latter conclusion, finding the cash gift to be a general legacy not subject to the doctrine of ademption. The court also rejected the argument that the sale of the house was a condition precedent to the charitable gift.

## Reading Material

The following materials deal with wills and estates topics:

- [\*A Practical Guide to Elder Abuse and Neglect Law in Canada\*](#), a [Canadian Centre for Elder Law](#) publication released January 17, 2011;
- [\*Tax court delivers smackdown to charitable donor\*](#), *Lawyers Weekly*, March 18, 2011 - this article discusses [\*Maréchaux v. Canada\*](#), 2010 FCA 287, in which the Federal Court of Appeal upheld the trial court's decision that a tax payer participating in a leveraged charitable donation program was not entitled to any tax credit because the significant benefit he received from making the donation (the interest-free financing arrangement) meant it was not a true "gift" to the charitable foundation;
- [\*Executor's insurance - Protecting executors from personal liability\*](#) - this March 4, 2011 *Lawyers Weekly* article discusses the rationale for a new product being offered by the Ontario Bar Association - executor's insurance.

## Brandon CPD: LSM

For those who missed last spring's popular program on [Powers of Attorney Accountability: A Litigator's Perspective](#) it will be repeated in Brandon on May 25, 2011, from 1:30 to 3:30 p.m. Topics to be covered include: a case law and legislation review; standard of care; advising an attorney; attorney compensation; and the accounting process. Mail or fax your [registration form](#) to the Law Society.

## New Media Legal Education Products: LSM

Many of the [new media legal education products](#) currently being sold by the Law Society deal

with property and succession topics. These include DVD-ROMs of the following sold-out programs:

- [Death Bed Wills](#) - contains the video presentation, written materials and powerpoint from the December 2009 presentation on working with clients with diminished or diminishing capacity;
- ['Til Death Do Us Part...and beyond](#) - the presentation and materials from last year's program examining issues that arise at the intersection of family law and death;
- [Estate Planning for Common Law Couples](#) - contains the video, written materials and powerpoint of the November 2010 presentation;
- [Hot Topics in Real Estate 2011](#) - this two disc set captures the full presentation by Jeff Shypit, Ned Brown, Frank Bueti and Bob Tyler and includes all written materials.

## Section Events: MBA

The Real Property Law section of the MBA is presenting the program [Rights and obligations of riparian owners and others wishing to conduct activities on or near bodies of water](#) on March 24, 2011, starting at 5:00 p.m. at the offices of Pitblado LLP.

The Wills and Estates section will present the program [Children's Trusts and the Role of The Public Trustee](#) on March 25, 2011, from 12:00 noon to 1:30 p.m. at the Law Society classroom. Speakers Joanna Knowlton and Jana Taylor of the Public Trustee's Office will discuss the various situations where children's financial interests are before the courts and the role of the Public Trustee in protecting those interests and managing children's trusts.

RSVP for both programs as required.

## STEP Events

The [Winnipeg Branch](#) of the [Society of Trust and Estate Practitioners](#) (STEP) has two upcoming programs scheduled:

- [Estate Planning Agreements](#) - John Poyser will discuss how these contracts are used and the issues that arise when drafting them on March 17, 2011, from 12:00 noon to 1:30 p.m.;
- [CRA Roundtable](#) - Christine Van Cauwenberghe will moderate this question and answer session with CRA staff members on May 19, 2011, from 2:00 to 4:00 p.m.

Both sessions will be held at the Fairmont Hotel.

## Spring Conference

The 2011 National [Charity Law Symposium](#) will be held May 6, 2011 in Toronto. See the conference brochures for further details and to register.

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