



eLaw - Property & Succession Update

April/May 2011 - No. 52

ISSN 1916-3894

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Appeal from LSM Tax Exemption Dismissed: MBCA

In [*Winnipeg City Assessor v. Law Society of Manitoba*](#), 2011 MBCA 35 the Court of Appeal dismissed an appeal by the Assessor from a [lower court ruling](#) that the Law Society of Manitoba is a seminary of learning and therefore exempt from taxation for school purposes pursuant to [s. 23\(1\)\(d\)](#) of *The Municipal Assessment Act*. The court found it had no jurisdiction to consider whether the Law Society property fit within the seminary of learning exemption since that is a question of mixed fact and law. The court cautioned, however, that the lower court decision must be "understood in the context of its own unique circumstances," since little evidence was before the judge concerning the LSM's dominant purpose.

Testamentary Capacity, Undue Influence and Delusional Behaviour: MBQB

While the testatrix's manner of dividing her estate might be considered "capricious, inequitable and unfair," in the absence of evidence of delusions in her dealings with her children or suspicious circumstances surrounding the signing of the will, challenges to the will were dismissed in [*Smith v. Smith Estate*](#), 2011 MBQB 49. On the question of proving delusions the court said:

The relevant period of time to consider testamentary capacity is when Mrs. Smith gave instructions for, and signed her will and codicil. Is there any evidence that she suffered from delusions, as defined by the case law? The evidence suggests that she was suspicious, untrusting and frugal. These personal traits are not equivalent to harbouring delusions, nor is it equivalent to a lack of testamentary capacity, particularly when the evidence suggests that these were not changes in her personality, but reflected her attitudes and behaviour throughout her life. (para.61)

***Mortgages Brokers Act* and Regulation Proclaimed**

[*The Mortgage Dealers Amendment and Securities Amendment Act*](#), S.M. 2009 c.16 was proclaimed April 20, 2011. *The Mortgage Brokers Act* and [Regulation 41/2011](#), requiring the licensing and regulation of mortgage brokers, will come into effect May 1, 2011. The Canadian Association of Accredited Mortgage Professionals (CAAMP) is working with the Manitoba Securities Commission to develop and administer courses related to the changes. For further information on the new legislation see the [MSC website](#).

What's New in Wills and Estates Law

The March 2011 edition of [The Last Word](#), the CBA Wills, Estates and Trusts section newsletter, contains articles on: new estate, gift and generation-skipping transfer ("GST") tax legislation in the United States; draft reporting rules requiring taxpayers to report avoidance transactions as defined under the GAAR; new succession legislation in Alberta; and a discussion of [Re Foote Estate](#), 2009 ABQB 654 (recently [upheld](#) by the Alberta Court of Appeal), which provides a comprehensive overview of the law of domicile.

[Testators' discriminatory trust conditions](#), a *Lawyers Weekly* article from April 8, 2011, considers how the courts are regulating testamentary freedom by limiting the ability of testators to condition beneficial interests in trusts in ways that contradict public policy. The author argues that the many complex factors at play in a decision to strike discriminatory trust conditions need to be "candidly acknowledged and carefully considered as the law moves forward."

The Practice Points paper [Lifetime Dispositions and at Death-General Principles](#) reviews the tax consequences associated with the transfer of assets, including recent developments surrounding joint tenancies and fraudulent conveyances.

The May 2011 National Health Law section newsletter *Pulse* contains two articles which may be of interest to wills and estates practitioners:

- [Advance care planning - What's law got to do with it?](#) summarizes the initiatives of a national project titled Advance Care Planning in Canada: A National Framework and Implementation. The group's draft [Framework](#) was released November 2010 and is currently being finalised.
- [The legal and ethical conundrum of decision-making in end of-life disputes](#) discusses the law regarding treatment decisions for patients in circumstances of clinical futility.

Articles on Real Property Topics

[Damage to property prior to closing](#) - This *Lawyers Weekly* article from April 22, 2011 discusses how to determine the parties' rights when something unexpected happens to the property between signing the agreement and closing.

[Seller Beware](#) - from *Canadian Lawyer* magazine, looks at the risks involved in signing pre-sale agreements for yet-to-be built condo developments. Lenders often require such agreements before they will provide financing, but they pose risks for both buyers and sellers and increasingly result in litigation.

CPD Programs: LSM

[Will Drafting Process and Pitfalls - Can You Afford to Charge \\$175?](#) - presenters Cynthia Hiebert-Simkin & Jennifer Pfuetzner will discuss common will drafting errors and how best to meet the duties the courts have laid out in this afternoon program. It takes place June 3, 2011 at the Law Society classroom.

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.

Section Events: MBA

[End of Life Decisions](#) - A joint presentation on the legal issues raised by the Golubchuk case, to be held June 6, 2011 from 12:00 noon to 1:45 p.m. in the Law Society classroom. Attendees will view a video of a recent debate on the issues, followed by a panel discussion on end-of-life decision making.

[Assorted International Issues for Wills and Estates](#) - Speaker John Delaney will discuss the conflicts of laws issues surrounding administration of estates with foreign property and will review the basics of the Convention providing a Uniform Law on the Form of an International Will at this lunch presentation on June 1, 2011.

STEP Events

The [Winnipeg Branch](#) of the [Society of Trust and Estate Practitioners](#) (STEP) is hosting a [CRA Roundtable](#) on May 19, 2011, from 2:00 to 4:00 p.m. at the Fairmont Hotel. Christine Van Cauwenberghe will moderate this question and answer session with CRA staff members.

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