



Acting as a Trustee by Doug Paterson, Q.C.

Those who act for family and friends under a power of attorney or under an Order of the Court as a Committee (Kom-mitt-ee) must be very cautious in dealing with the assets of another under their control. A recent Manitoba example of the need for caution is the Court of Appeal decision in *Todosichuk v. Daviduik*.

In that case an 87 year old lady suffered a serious stroke in December 1997. The Aunt lived in the nieces' home for some months. Her niece had then been appointed by the Court as Committee under the Mental Health Act. As such the niece had to meet the high standards of being a trustee and being accountable to her Aunt and to the Court.

In March 1999, the Aunt was placed in a personal care home, until her death in November 1999.

In July 1999, the Committee (niece) began to renovate her Aunt's house to the tune of \$35,500. Evidence showed this increased the market value of the house from \$50, 000 to

\$66,000. The Committee's son was to inherit this house from the Aunt – being his great-Aunt. Renovations ended in February 2000, meaning work continued even after the Aunt died!

Of course, the other beneficiaries of the Aunt's estate found this to be troubling. The renovations were being paid for in effect by them from their future inheritances and went to improve the house to be inherited by the Committee's son. The Committee was spending her aunt's money, for the benefit of the Committee's son, not the Aunt.

The other beneficiaries said this was not reasonable and forced the Committee "to pass accounts" or justify her actions as Committee to the Court.

The trial judge held the renovations, given their circumstances and timing, were a gross violation of the Committee's duties.

This case illustrates the need for persons in a position of trust and exercising a fiduciary duty to act in a business-like,

common-sense, proper manner. Records must be properly kept. Actions should not even look suspicious or questionable.

The Committee appealed the Queen's Bench ruling to the Manitoba Court of Appeal. The three Justices affirmed the lower court decision and confirmed the renovations made were a breach of her fiduciary duty. The Committee had to pay for the renovations herself.

The law is clear: a fiduciary must perform her duties diligently, honestly, with integrity and in good faith, for the benefit of the incapable person, showing the highest commitment of loyalty and trust.