

File No. CI 08-01-57416

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**LIONEL ANDRE BOUCHARD,**

**Applicant,**

**- and -**

**ANDRE LIONEL BOUCHARD and JACK BOCK,**

**Respondents.**

---

**AFFIDAVIT OF ANDRE LIONEL BOUCHARD**  
Sworn the 21<sup>st</sup> day of July, 2008

---

**CHAPMAN, GODDARD, KAGAN**  
Barristers and Solicitors  
1864 Portage Avenue  
Winnipeg, Manitoba. R3J 0H2

**Kelly P. Land**  
Phone No. 888-7973  
Fax No. 832-3461

**File No. 33,581**

File No. CI 08-01-57416

THE QUEEN'S BENCH  
Winnipeg Centre

BETWEEN:

LIONEL ANDRE BOUCHARD,

Applicant,

- and -

ANDRE LIONEL BOUCHARD and JACK BOCK,

Respondents.

**AFFIDAVIT OF ANDRE LIONEL BOUCHARD**

I, Andre Lionel Bouchard, of the City of Portage la Prairie, in the Province of Manitoba,

MAKE OATH AND SAY:

1. That I am one of the Respondents herein and as such have personal knowledge of the matters hereinafter deposed to by me, except where stated to be based upon information and belief and where so stated I do verily believe same to be true.

2. That I have read the Affidavit of the Applicant, my father Lionel Andre Bouchard, sworn July 4, 2008 and make this Affidavit in response thereto.

3. That in response to Paragraph 4 of the Affidavit my father has in fact lived in the residence

and resided there up until approximately February 1, 2006. The photos attached to the Affidavit are actually photos from 1990 and do not reflect the condition of the property at the time my father moved to St. Eustache Manor on February 1, 2006.

4. That in response to Paragraph 6 in September, 2002, the Applicant and I entered into an Agreement to purchase the balance of the farm. Attached hereto and marked as Exhibit "A" to this my Affidavit is a copy of the Purchase Agreement. At the same time we entered into a written Agreement dated September 23, 2002, in respect of a right to occupancy in favour of the Applicant. Attached hereto and marked as Exhibit "B" to this my Affidavit is a copy of the said Agreement. As can be seen from the document there were several conditions in respect of the right to occupancy concerning the property which were agreed to by all parties at the time of the purchase.

5. That the Applicant did in fact live on the property up until February 1, 2006. Shortly prior to that date on December 16, 2005, the Applicant had a severe fall on ice. He spent nearly a month in hospital. Upon the recommendation of the Grace Hospital and the recommendation of Agnes Wiedman, my father was assessed at the Mental Health Program at Portage District General Hospital. Prior to the assessment we had spoken to my father about the dangers of living alone. Myself and my sisters, Linda and Claire, were aware of the problems he was having looking after himself. His daughter, Marlene Legare, who he indicates was going to look after him became subject to a Court Order and not allowed to have contact or communication with any family member, including the Applicant. These proceedings had been going on for some time prior to the ultimate date of the Order being February 8, 2007. As such Marlene Legare was not available to look after our father. Upon his fall it became evident to me from the condition of his home that he was not in a

7. That in response to Paragraph 9 at no time did I barge into his property, as he alleges, or at all, demanding that he leave. The only discussions we had at all during this period of time were over my concern and that of my sisters with the exception of Marlene, for my father's safety and well being in trying to live on his own in a remote residence. Attached hereto and marked as Exhibit "F" to this my Affidavit is the Final Amendment to the Life Interest of my father that resulted from the discussions we had in late February, early March of 2006. This was the last time my father ever raised returning to the home until this Application was brought.

7. That in response to Paragraph 13 the Applicant was in fact in St. Eustache Manor from February 15, 2006, until June 1, 2007. At that time he decided to, on his own, rent an apartment in Elie from TB Holdings. When he disclosed this I agreed with him that I would continue the \$200.00 per month rent subsidy which amounted to, essentially half of his rent. He indicated to me at the time that he wished to live in Elie closer to his friends. Attached hereto and marked as Exhibit "G" to this my Affidavit is a copy of his renewal of that tenancy which he signed on March 1, 2008. Attached hereto and marked as Exhibit "H" to this my Affidavit is a copy of the Notification of Cancellation of that tenancy. This move was again prompted solely by my father and was not directed by any of the family. At no time did he indicate any intention to return to the former residence. The residence in fact remained empty from February, 2006 through to December, 2007. It was in December, 2007 that I rented the property to the Co-Respondent, Jack Bock, on a month to month basis. At that time the Respondent had been out of the property for nearly 22 months and apart from the possibility of moving back in on June 1, 2006 had never expressed any intention of doing so nor any interest in doing so.

8. That specifically in response to Paragraph 13 at no time after June 1, 2006, did the Applicant ever indicate to me that he wished to return to the former residence or had an intention or resuming his life interest therein. That continued as late as January 20, 2008, when I last saw my father at the family birthday party held for him with my sisters, in Manitoba. I in fact had paid to my father his January rent subsidy on January 22, 2008, in the amount of \$200.00 and shortly thereafter provided him a lump sum of \$2,000.00, for the balance of the year. Attached hereto and marked Exhibit "I" to this my Affidavit are copies of those two cheques dated January 22, 2008, and March 11, 2008.
9. That in response to Paragraph 14 the only individual who was renting the property was Jack Bock who in fact only commenced occupation of the property in a Tenancy Agreement in December, 2007. No request, as indicated, had been received by the Applicant to move into the property at the time the rental agreement was entered into.
10. That between February 13, 2008, and June 1, 2008, my father ceased having any communication with myself or the family. I am aware that he again began having communication with my sister Marlene in British Columbia and that she in fact had the Court Order amended in British Columbia in December, 2007, permitting her contact with the Applicant. After two weeks of not hearing anything from him and being unable to locate him in Elie we contacted the RCMP and made a missing persons report. Subsequently we received a call from his sister indicating that he was on holidays. It has only been since receipt of the correspondence from the Applicant's counsel being a letter received by me by ordinary mail in early April, 2008 together with the filing of a Caveat against the property by the Applicant that I was aware that he wished to attempt to resume his life interest in the property.

11. That in response to Paragraph 16 we did in fact clean the residence at the time of my father's admission to hospital. As indicated he had a habit of going to the Municipal Nuisance Yard and collecting garbage and junk which he stored on the property and inside the house. My father had no furnishings or possessions of any significant value beyond those which he took with him to St. Eustache Manor. Any other items were placed in storage on the property.

12. That in response to Paragraph 17 I have never been requested by anyone to provide access to the property for retrieval of equipment.

13. That in response to Paragraph 19 I have assumed since June 1, 2006, and the Applicant renting property in Elie that he had permanently vacated the home and had no intention to re-attend. We have had many opportunities to discuss the issue between June 1, 2006, and January 22, 2008, however, not once did he ever make an indicating that he was intending to retake possession or that he expected or felt he was entitled to any compensation in respect of the issue.

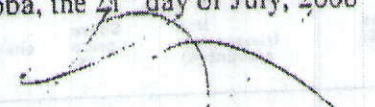
14. That in respect of his rent for February, March and April, 2006, at St. Eustache Manor I in fact subsidized his rent as called for. I also subsidized his rent beyond that period of time. Attached hereto and marked as Exhibit "J" to this my Affidavit are copies of six cheques being from June 30, 2006, through to November 30, 2006, for \$200.00 each as the rent subside together with my bank statements confirming the withdrawal of those funds. The cheques were all made payable to the Credit Union and Lionel Bouchard for rent. As indicated previously I was in no way involved with the applicant's rental of the suite in Elie and was anticipating that the Applicant would have moved into the Personal Care Home in Elie which he had his name on the waiting list for a considerable

period of time. The rental suite in Elie was not something that I was aware of until well after the fact that my father had already rented the property. I am aware that some time around June 1, 2008, my father returned to the Elie area and moved in with Mike Slegers. I am aware that he has spoken to the Headingley RCMP and to my knowledge almost no family members have had any direct communication with the Applicant since his return from British Columbia. I am aware that he is in contact with my sister, Marlene, in British Columbia.

15. That I make this Affidavit bona fide.

SwORN Before me at the City of  
 Winnipeg, in the Province of  
 Manitoba, the 21<sup>st</sup> day of July, 2008 )  
 )  
 )  
 )

  
 ANDRE LIONEL BOUCHARD

  
 \_\_\_\_\_  
 KELLY P. LAND  
 A Barrister entitled to practice in and  
 For the Province of Manitoba

# RIGHT OF OCCUPANCY AGREEMENT

BETWEEN:

**LIONEL BOUCHARD**

Hereinafter called "the Vendor"

-and-

**ANDRE LIONEL BOUCHARD**

Hereinafter called "the Purchaser"

WHEREAS the Vendor has sold the following land to the Purchaser:

SE 1/4 14-11-3 WPM exc. 1stly: The Wly 990 feet prop; secondly: Plane 2215 and 28648 PLTO; 3rdly: Road Plan 1205 PLTO;

AND WHEREAS the parties have agreed that the Vendor is to retain the right to continue to occupy the residence on the said land as long as they wish to do so during their lifetimes:

NOW THEREFORE the parties hereto agree each with the other as follows:

1. The Vendor shall have the personal right to occupy the residence on the land for as long as they desire, on a rent free basis.
2. The Vendor shall have free and unrestricted access to and from the residence.
3. During their occupancy of the residence, the Vendor shall pay all utility costs and shall repair and maintain the residence, excepting only reasonable wear and tear.
4. The Purchaser shall be responsible for all structural repairs to the residence and replacing the furnace and hot water tank when required.
5. During their occupancy of the residence, the Vendor shall pay, within 30 days of notice from the Purchaser, that portion of any municipal, school or provincial taxes levied against the land that relates to the residence.
6. During the life of this Agreement, the Vendor is responsible for maintaining fire insurance on his personal possessions, as he sees fit, and the Purchaser shall maintain fire insurance on the residence.

This is exhibit B  
all of the said parties  
before me at Winnipeg  
this 21 day of July 2007

A BARRISTER-AT-LAW

ENTITLED TO PRACTICE IN THE PROVINCE OF MANITOBA



7. (a) Should the structure of the residence be damaged by fire or other cause, but the residence remains habitable, the Purchaser shall undertake appropriate repairs as soon as is reasonably practicable; the Purchaser shall not be obligated to put the residence into a condition better than it was prior to being damaged. The Vendor shall take all necessary steps to facilitate the repairs.

(b) Should the structure of the residence be damaged by fire or other cause so that it is no longer habitable, the Purchaser shall have the sole right to decide whether or not to rebuild the residence but must so decide within 15 days of the damage occurring. If the Purchaser chooses not to rebuild then this agreement shall terminate forthwith. If the Purchaser chooses to rebuild then the Vendor's right of occupancy shall resume when the residence is again habitable and, until then, the rights and obligations created by this Agreement are suspended.

8. The rights provided to the Vendor by this Agreement are personal to the Vendor and may not be assigned, encumbered or conveyed in any fashion. Without limiting the foregoing, this Agreement does not allow the Vendor to lease or otherwise give up possession of the residence to any one except the Purchaser.

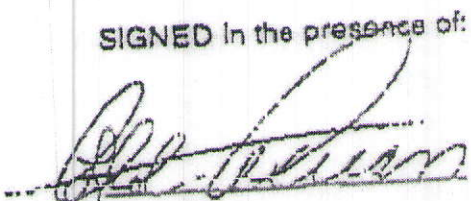
9. Upon the death of the Vendor, or if the Vendor during his lifetime vacates the residence permanently, the right of occupancy created by this Agreement is terminated and the Purchaser shall have immediate and exclusive possession of the residence, without compensating in any way the Vendor or his heirs, successors or assigns.


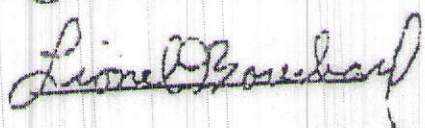
10. Time shall be in all respects of the essence hereof.

11. This agreement shall be binding upon each of the parties hereto and their respective heirs, executors, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement this 23 day of September, 2002

SIGNED in the presence of:

  
 )  
 )  
 )  
 )

This Agreement made this 11<sup>th</sup> day of February, 2006

Between:

ANDRE BOUCHARD,

Son, of the first part,

And

LIONEL BOUCHARD,

Father, of the second part,

NOW WITNESSETH THAT:

- 1) Lionel Bouchard has agreed to live at the St. Eustache Manor effective immediately to alleviate safety concerns;
- 2) Andre Bouchard has agreed that he will pay the rental expenses for Lionel Bouchard<sup>s</sup> for the months of February, March and April, 2006 at the St. Eustache Manor;
- 3) It is agreed that the family house located on Bouchard Drive in Elie will remain vacant until June 1<sup>st</sup>, 2006 and Lionel Bouchard will be given access to the family farm should he wish to visit or spend part of the day on the premises;
- 4) It is agreed between the parties that Lionel Bouchard will be allowed to return to live on the family farm on June 1<sup>st</sup>, 2006 should he so choose, at which time a new Agreement will be prepared between the above two parties.

SIGNED THIS 11<sup>th</sup> day of February, 2006.

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Witness

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Lionel Bouchard

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Andre Bouchard

The foregoing C. ...  
 at ...  
 this 11<sup>th</sup> day of February, 2006

A BARRISTER-AT-LAW  
 REGISTERED IN THE PROVINCE OF ...

*[Handwritten Signature]*  
 9 e h i d e

**Mental Health Programs**

PORTAGE DISTRICT GENERAL  
524 - 5th Street, S.E.  
Portage la Prairie MB R1N 3  
Tel: 204 239 2320  
Fax: 204 239 0451  
Web Site: www.rha-central.r

**Geriatric Services**  
**Telephone: 239-2307**  
**Fax: 239-0451**  
March 2, 2006

**ASSESSMENT/RECOMMENDATIONS**

**NAME:** Lionel BOUCHARD

**D.O.B.:** ~~XXXXXXXXXX~~ 24

**MHSC #** ~~XXXXXXXXXX~~

**PHIN:** ~~XXXXXXXXXX~~

**FILE#:** 3216

**DATE OF ASSESSMENT:** February 15 - 23, 2006

**REFERRING AGENCY:** Agnes Wiedman, Continuing Care, Starbuck

**PHYSICIAN:** Dr. J. Malmstrom, Cartier Medical Clinic, Elie

**COPIES TO:** Dr. J. Malmstrom  
Agnes Wiedman, Continuing Care  
Geriatric Services File

**SOURCES OF INFORMATION:** Lionel Bouchard, client  
Andy, Claire, Linda, Doreen, Marlene, children of client  
Dr. J. Malmstrom

**REASONS FOR REFERRAL:**

Mr. Bouchard was referred to Geriatric Services by Agnes Wiedman of Continuing Care, after he had been discharged from Grace Hospital in Winnipeg. He had been in hospital due to post-concussion confusion after having suffered a fall on ice December 27, 2005. Agnes was requesting an assessment re his cognition, ability to make decisions for himself and functional abilities.

**MEDICAL HISTORY & CURRENT STATUS:**

Writer was not able to obtain much medical information concerning Mr. Bouchard. Many thanks to Dr. Malmstrom for information she did forward concerning a CT scan of the brain and some bloodwork which had been done. His ongoing medical status is monitored by Dr. Malmstrom.

This document is the property of the  
Regional Health Authority - Central Manitoba  
and is to be used only for the purposes  
indicated on this document.  
this 21 day of July A.D. 2006

Regional Health Authority  
Central Manitoba Inc.

Disclosed by the Regional Health Authority - Central Manitoba  
in compliance with  
The Personal Health Information Act

RE BOUCHARD, Lionel  
Page 3

#### Additional Physical Issues/Information:

Mr. Bouchard had a double hernia repair in the 60's; he's also had a hemorrhoidectomy and prostate problems. Most recent issues began after a fall December 16, 2005, at a church. He was unconscious for a period of time, was taken by ambulance to Grace Hospital, and was discharged on December 17. On December 27<sup>th</sup> he started to have problems with agitation and confusion, was returned to Grace Hospital, re-admitted, and remained there until the end of January, 2006

#### SOCIAL HISTORY & FUNCTIONING:

##### Family of Origin:

Lionel is one of ten children born to the farming family of Aime and Germaine Bouchard. They farmed just north of Elie, MB, where all of the children were born. Of the ten siblings, eight remain living; two brothers have died due to heart attacks. His father also died at the age of 46 due to a heart attack, at which time his mother remarried Maguire Bernardin. Together they had no children. Lionel describes his mother as being a very good mother and he enjoyed his family life and upbringing, and living in the Elie area.

##### Immediate Family:

Lionel is presently divorced from his one and only wife Jeanette, for approximately the last twenty-seven years. During their marriage they had nine children, eldest daughter Leona, resides in Calgary, Marlene, resides in Vancouver, Beatrice (deceased), Helen resides in Milwaukee, Wisconsin, Lynda resides in Winnipeg, Claire lives in Teulon, Andy lives in Portage la Prairie, Gerry resides in Lloydminster, and Doreen lives in Winnipeg. According to information gathered from family members, this family has experienced considerable conflict between siblings for many years. Lionel has been described as having quite a temper when he was younger, but seems to have mellowed later on in his life. Lionel indicates that his wife left him for another man twenty-seven years ago; he has never had the urge to remarry. Although he has sold the farm (which is a Century Farm) to his eldest son Andy, he had remained living in the home until recently.

##### Education Attained:

Grade 4 education. It was about this time that his father died and he had to start working at home on the farm to help out.

##### Employment History:

Ever since leaving school, he worked at managing the family farm and later in life worked for the Rural Municipality of Cartier for approximately forty years. Since his retirement, he has been selling fish around the Central Region. He purchases same from a fisherman in Riverton, and then sells to an established clientele. He indicates that he has very much enjoyed this and has met many good friends.

Disclosed by the Regional Health Authority - Central Manitoba  
in compliance with  
The Personal Health Information Act

RE BOUCHARD, Lionel 32.6  
Page 4

#### **Past/Current Supports & Resources:**

##### **Formal Supports**

Physician of choice is Dr. J. Malmstrom of the Cartier Medical Clinic. Since his discharge from hospital in late January, Continuing Care has been assisting with his medication and checking on him on a daily basis.

##### **Informal Supports:**

Although the family has attempted to be very supportive, there is conflict between many of the family members and one of the sisters, Marlene. This appears to be over a disagreement as to whether Mr. Bouchard should be living in his family home just north of Elie, or in the apartment at St. Eustache where Mr. Bouchard, in agreement with his family, decided to move following his discharge from hospital. According to Marlene, there had been some sort of an agreement that Lionel would be able to remain living at home as long as he could or wished. It is important to note that in the discharge summary dated January 27, 2006, it was felt that supportive housing would be most appropriate and Social Services and Continuing Care were involved in the discharge planning. Indications were that his daughter had agreed to stay with him in the interim until the supportive housing was arranged.

#### **FUNCTIONAL STATUS:**

##### **Self-Care**

All indications are that Mr. Bouchard is very capable maintaining all of his own ADL's and IADL's. Up until his most recent hospitalization, he had been driving with a valid driver's license - no problems indicated, other than the fact that a couple of his clients had contacted Andy with some concerns re his memory last fall. Mr. Bouchard is quite cooperative to not driving at the present time until his medical situation becomes stable. Prior to his latest hospital stay, Mr. Bouchard was managing all of his own cooking, cleaning, yard work, etc. and he very much enjoyed working outside helping the neighbours by mowing their lawns with his Ford 9N tractor. He indicated that he used to go to the Elie Seniors Group once weekly for a supper outing and very much enjoyed same.

##### **Productivity: Volunteer/Paid Work:**

Mr. Bouchard has very much enjoyed working around the community in Elie. He is a gentleman who very much enjoys helping out his neighbours and doing odd jobs such as mowing lawns, and other activities. He has continued to market fish in the Elie area, which he purchases from a commercial fisherman in Riverton. He also very much enjoys driving a combine for his son in the fall when they are doing custom thrashing.

##### **Leisure Activities:**

As indicated previously, Mr. Bouchard is very active outdoors. He enjoys hunting and trapping, indicates that he still hunts rabbits, although gave up deer hunting.

Disclosed by the Regional Health Authority - Central Manitoba  
in compliance with  
The Personal Health Information Act

RE BOUCHARD, Lionel  
Page 5

He very much enjoys travelling around the country selling his fish and meeting people. Up until the most recent past, Mr. Bouchard also has a motorhome and enjoys travelling all over Canada. He indicates an extreme desire to travel the Alaska Highway this summer.

#### Physical Environment:

At the time of the initial interview, Mr. Bouchard was just being moved into a one-bedroom apartment in St. Eustache Manor. Prior to that he was living in the house on the family farm. Indications are, according to Mr. Bouchard, that he has had his name on the waiting list at Elie Manor for approximately five years.

As indicated previously, Marlene objects to Lionel's move to St. Eustache Manor, citing concerns that he is being taken advantage of by the son Andy. When speaking to Mr. Bouchard, he is quite agreeable to the move and indicates that he would enjoy the company of other people and the assistance from Continuing Care since his fall. He feels that he may want to go back to the farm in the summer once things have been cleared and some conditions in the home have been improved. The family appears to be quite agreeable to this, other than the one sister Marlene.

#### Financial Management:

Mr. Bouchard indicates that his income is approximately \$1,300 per month. Up until the most recent time he was banking at the Bank of Montreal, Winnipeg, and also the Credit Union in Elie. Apparently all monies have now been moved to the Credit Union in Elie since the most recent problems. The daughter Claire at present has the Power of Attorney. There have also been many issues considering the Power of Attorney as one Power of Attorney was done on January 10<sup>th</sup>, giving the daughter Lynda and the son Andy Power of Attorney. Mr. Bouchard was subsequently taken to the same lawyer January 27<sup>th</sup> by Marlene, and the Power of Attorney was changed to Claire Demery.

#### PSYCHIATRIC/COGNITIVE HISTORY & FUNCTIONING:

##### Relevant History:

There has been no record of previous involvement with mental health clinicians or geriatricians in the Central Region in the past seven years. Apparently, according to the family after his fall, subsequent concussion and problems after his initial discharge, he was seen by psychiatry and psychology at the Grace Hospital. We have not had access to that information.

##### General Attitude:

Although Mr. Bouchard was very cooperative to the assessment procedure throughout, at times he appeared to be somewhat preoccupied with the thoughts and confusion re what is going on around him with his family. When discussing things other than the problems with family matters, his mood becomes quite

Disclosed by the Regional Health Authority - Central Manitoba Inc.  
in compliance with  
The Personal Information Protection Act (PIPA)