

# HOOK & SMITH

Barristers, Solicitors and Notaries Public

201 - 3111 Portage Avenue  
Winnipeg, Manitoba  
CANADA  
R3K 0W4  
Tel: (204) 885-4520  
Fax: (204) 837-9846  
E-Mail: wsmith@hookandsmith.com  
1998)

Dennis A. Smith, LL.B.  
Bernard Toews, B.A. LL.B.  
Winston F. Smith, Q.C.  
Grant W. Davis, B.A. LL.B.  
Sarah Thurmeier, B.A. Adv. LL.B.  
Gordon P. Hook (Retired)  
Garry N. Harvey (1944-

File No 11090S

August 1, 2008

VIA COURIER

## Chapman Goddard Kagan

1864 Portage Avenue  
Winnipeg, MB R3J 0H2

Attention: Mr. Kelly Land

Dear Mr. Land:

### **Re: Lionel André Bouchard v. André Lionel Bouchard**

Enclosed herewith is a revised Applicant's Brief that will be filed in Court. You will note that the Brief has been revised to add the cases listed dealing with undue influence. In addition, I have added the matters of termination and undue influence to the list of issues. Concurrently, with this letter the revised Brief is being filed in the Court.

Yours truly,

**HOOK & SMITH**

Per: **FILE COPY**

**Winston F. Smith, Q.C.**

WFS/ca

cc. Lionel Bouchard

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**LIONEL ANDRÉ BOUCHARD,**

applicant,

- and -

**ANDRÉ LIONEL BOUCHARD and JACK BOCK,**

respondent.

---

**APPLICANT'S BRIEF REVISED**

---

HOOK & SMITH  
Barristers and Solicitors  
201 - 3111 Portage Avenue  
Winnipeg, Manitoba  
R3K 0W4

Winston F. Smith, Q.C.  
Ph: 885-4520  
Fax: 837-9846  
File No. 11090S

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**LIONEL ANDRÉ BOUCHARD,**

applicant,

- and -

**ANDRÉ LIONEL BOUCHARD and JACK BOCK,**

respondent.

---

**APPLICANT'S BRIEF REVISED**

---

INDEX

		<b>Page No.</b>
Part I	List of Documents	3
Part B	List of Cases and Statutory Provisions	5
Part C	List of the Point to be Argued	6

## A - LIST OF DOCUMENTS

1. Affidavit of Colleen Elizabeth Owen sworn July 4, 2008, with the following Exhibits:
  - a) Exhibit "A" - letter sent to Jack Bock and André Lionel Bouchard by Hook & Smith, March 28, 2008;
  - b) Exhibit "B" - Canada Post Corporation – event management on-line track a package detailed item information for item no. 79235586621.
  
2. Affidavit of Michael Bernardis Slegers sworn June 25, 2008.
  
3. Affidavit of Lionel André Bouchard sworn July 4, 2008, with the following Exhibits:
  - a) Exhibit "A" & "B" – Photographs of the Lionel Bouchard home;
  - b) Exhibit "C" – Sketch of the land (Lionel Bouchard home);
  - c) Exhibit "D" - written agreement between Lionel Bouchard and his children, dated January 30, 2006;
  - d) Exhibit "E" – Agreement dated February 11, 2006;
  - e) Exhibit "F" – letter dated March 28, 2008, from Hook & Smith, Barristers, Solicitors and Notaries Public, sent via registered mail to Jack Bock and by ordinary mail to André Lionel Bouchard;
  - f) Exhibit "G" – MTS Allstream Landscape Maintenance Services Contract with Lionel Bouchard dated April 4, 2008;
  - g) Exhibit "H" - Caveat claiming a life estate in favour of Lionel André Bouchard by virtue of a written agreement between André Bouchard and Lionel Bouchard, dated February 11, 2006.
  
4. Affidavit of Patrick Robson sworn July 10, 2008.

5. Affidavit of Carrie Allard sworn July 14, 2008, with the following Exhibits:
  - a) Exhibit "A" - Patrick Robson Bailiffs and Process Service Particulars of Service report dated July 10, 2008;
  - b) Exhibit "B" – cover page of Notice of Application;
  - c) Exhibit "C" – cover page of Affidavit of Michael Benardis Slegers;
  - d) Exhibit "D" – cover page of Affidavit of Colleen Elizabeth Owen;  
and
  - e) Exhibit "E" – cover page of Affidavit of Lionel André Bouchard.
  
6. Affidavit of Patrick Robson sworn July 10, 2008.

**B - LIST OF CASES AND STATUTORY PROVISIONS RELIED ON BY THE APPLICANT**

**CASES**

1. Geffen v. Goodman Estate, 1991 CanLII 69 (s.c.c.)
2. Williams v. Downey-Waterbury, 1994 CanLII 6410 (MB C.A.)
3. Pyle v. Pyle, 2003 MBQB 129 (CanLII)

**STATUTORY PROVISIONS**

1. *The Court of Queen's Bench Act, C.C.S.M. c. C280 s. 37(1)*
2. *The Court of Queen's Bench Rules, 14.05 (2) (c) (v), 16.08, 38.01, 38.02, 38.03, 38.04, 38.05 (1), 38.05 (3), 38.07 (2), 60.03 and 60.09*
3. *The Real Property Act C.C.S.M. c. R 30 s. 78:*

**Unregistered instrument**

78 Every instrument, signed by an owner or other person claiming through or under him, purporting to pass an estate or interest in land, or to create a mortgage or encumbrance, for the registration of which provision is made by this Act, shall, until registered, be deemed to confer upon the person intended to take under the instrument, and upon others claiming through or under him, a right or claim to the registration of the mortgage, encumbrance, estate, or interest.

### C - LIST OF THE POINTS TO BE ARGUED

1. Commencement of Application [QB Rule 14.05 (2) (v)]:
  - (a) This matter involves, *inter alia*, an application for possession to his home by the applicant enforceable by a writ of possession and a right of access over the land of the respondent, André Lionel Bouchard.
  - (b) Such application will involve, therefore, a finding and declaration that the applicant has an interest in the subject land by virtue of a life estate agreed upon by the respondent, André Lionel Bouchard when the applicant sold his remaining undivided one-half interest in his land and premises to his son, the respondent, André Lionel Bouchard (Affidavits of Michael Bernardis Slegers and Lionel André Bouchard);
  - (c) The matter is, therefore, properly before this court by way of Application.
  
2. Service of the Application materials [QB Rules 38.04 (2), 38.05 (3) and 16.08]:
  - (a) QB Rule 38.05 (3) provides for at least four days notice of this application, which is brought under QB Rule 38.04 (2);

- (b) Service on the respondent, Jack Bock, was made at least four days before the hearing (Affidavit of Service of Patrick Robson);
  - (c) Notice of the application documentation appears to have come to the attention of the respondent, André Lionel Bouchard, at least by Wednesday, July 9, 2008, as reported in the Bailiff's service report, Exhibit "A", of the Affidavit of Carrie Allard and confirmed as to notice through the telephone call received from counsel for the respondent, André Lionel Bouchard, Kelly Land.
  - (d) Actual service on the respondent, André Lionel Bouchard, of the Application documents followed by service on counsel, Kelly Land as admitted by him (Affidavit of Marilyn Robson);
  - (e) Accordingly, since the application came to the notice of the respondent, André Lionel Bouchard, at least four days before the hearing date, the applicant requests an order validating the service pursuant to QB Rule 16.08(a).
3. Urgency of the matter (QB Rule 38.07 (2)):
- (a) The applicant is 84 years of age, has lived in the home in question for at least 30 years and has farmed, raised his family and lived on the adjoining land basically all his life (Affidavit of the applicant);



- (b) The applicant received a life interest in this home property when he sold the balance of his interest in all his land and buildings to his son, the respondent, André Lionel Bouchard (Affidavit of the applicant);
- (c) The respondent, André Lionel Bouchard, confirmed in writing that the applicant has a life estate in the home property (Exhibits "D" and "E" of the Affidavit of the applicant);
- (d) The respondent, André Lionel Bouchard, confirmed verbally to a friend of the family that the applicant has a life estate in the home property (Affidavit of Michael Barnardis Slegers);
- (e) Inexplicably, the respondent, André Lionel Bouchard, although apparently prepared to pay the rent or to contribute to the rent of his father for accommodation elsewhere, has, without any reason, refused his father his right to live in his home for over two years;
- (f) The applicant is presently living with his friend, Michael Bernardis Slegers, but, understandably, wants to return to his home and peacefully enjoy his life estate (Affidavit of the applicant);
- (g) The applicant has a service contract that he must fulfill and is presently losing income by virtue of his inability to return to live in his home and gain access to his equipment to fulfill his commitment (Affidavit of the applicant);

- (h) The applicant holds a valid Manitoba driver's license and drives his own vehicle and is capable of looking after himself (Affidavit of the applicant);
- (i) Clearly, from all the evidence, the applicant has a life estate in the home property described in Exhibits "A", "B" and "C" of the Affidavit of the applicant and requires the right of access over the private road owned by the respondent, André Lionel Bouchard as shown on said Exhibit "C";
- (i) Considering all the circumstances, justice demands an order granting immediate possession of the applicant's home and premises and access thereto.

4. Has the life estate been terminated?

- (a) relevant chronology and documents:
  - (i) September 22, 2002 – Right of Occupancy Agreement (Exhibit "B" Affidavit of André Lionel Bouchard);
  - (ii) December 16, 2005 – slip and fall injury, hospitalization (paragraph 7 Affidavit of Lionel André Bouchard);
  - (iii) January 27, 2006 – discharge from hospital and return home (paragraph 8 Affidavit of Lionel André Bouchard);

- (iv) January 30, 2006 – written agreement of family members not to remove Lionel André Bouchard from his home (Exhibit “D” of Affidavit of Lionel André Bouchard);
- (v) February 11, 2006 – written agreement between applicant and respondent respecting living at St. Eustache Manor and a return to the family home on June 1, 2006 (Exhibit “E” of Affidavit of Lionel André Bouchard);
- (vi) March 2, 2006 – Geriatric Services Assessment/Recommendations Report of Assessment of Lionel Bouchard February 15-23 – 2006 with medical opinion letter of H. Zacharias, M.D. dated February 21, 2006 attached;
- (vii) March 30, 2006 – Amending Agreement to Right of Occupancy Agreement between Lionel Bouchard and André Lionel Bouchard (Exhibit “F” of Affidavit of André Lionel Bouchard);
- (viii) Early September months of 2006 – commitments of the respondent to a third party to return the applicant to his home after he has fixed it up (Affidavit of Michael Bernardis Slegers).

5. Has there been undue influence by André Lionel Bouchard of Lionel André Bouchard in negotiating the terms of the life estate and the amendment in those terms in the Right of Occupancy Agreement and the Amending Agreement to Right of Occupancy Agreement.

6. Interest of respondent, Jack Bock:

- (a) The applicant has a life estate in the home and premises;
- (b) A title in the name of the applicant for his life estate is obtainable from the Land Titles Office (*The Real Property Act C.C.S.M.c. R 30 s. 78*);
- (c) Whether a title is issued or not, the life estate vested in the applicant can only be encumbered or terminated by some conveyance executed by the applicant, such as a deed, transfer, mortgage or lease of the applicant's interest;
- (c) The respondent, André Lionel Bouchard, had no authority to convey the applicant's interest in the property, nor did he have any authority to rent or to allow any other form of occupancy of his father's home without his father's express consent and none was ever given (Affidavit of the applicant);
- (d) Without express consent from the applicant, the respondent, Jack Bock, has no legal right to occupy the home and premises of the

applicant and must, therefore, vacate the subject property immediately;

- (e) The respondents were both warned in March, 2008. The respondent Jack Bock never received the warning, but the person who acted without legal authority, the respondent, André Lionel Bouchard, did and did nothing;
- (f) There is no legal basis whatsoever to allow the respondent, Jack Bock, to remain in occupancy of the subject property.

7. Appropriate remedies:

- (a) An order requiring the respondent, Jack Bock, to immediately vacate the land and premises;
- (b) By virtue of the life estate vested in the applicant, the applicant is entitled to an Order for immediate possession of his land and premises in favour of the applicant, pursuant to QB Rule 60.03 enforceable by a writ of possession under QB Rule 60.09;
- (c) An Order declaring that the applicant has a right of access over the private road, owned by the respondent, André Lionel Bouchard;  
and
- (d) Costs on a solicitor and client basis.

All of which is respectfully submitted.