



Spring 2010

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GREEN ROOFING 101: TORONTO'S GREEN ROOF BYLAW

Beginning 2010, residents of Toronto will be seeing a newer and greener Toronto as Toronto is the first city in North America to pass a bylaw requiring the construction of green roofs on new developments.

This article will give a brief overview on the impact of Toronto's Green Roof Bylaw on new residential, commercial, institutional, and industrial developments.

What is a green roof?

A green roof is a roof surface that supports the growth of vegetation over a substantial portion of its area for the purpose of water or energy conservation. It is comprised of a waterproofing membrane, drainage layer, organic growing medium (soil) and vegetation.

Green roofs provide significant economic benefits, particularly in the areas of storm water management, reducing the urban heat island effect and associated energy use for cooling, enhancing bio-diversity, and improving air quality. Cool roofs (which we will later discuss) also help to reduce the urban heat island effect through its high solar reflectivity and thermal emissivity. Cool roofs consist of a coating applied over an existing roof or a new single-ply waterproofing membrane.

Who is required to build a green roof?

Toronto's Green Roof Bylaw applies to building permit applications made after January 31st, 2010 for new commercial, institutional and residential developments which contain a minimum gross floor area of 2,000 m². Effective January 31, 2011, the Bylaw will also apply to building permit applications for new industrial developments.

Depending on the size of the commercial, institutional or residential building, the required size of the green roof varies from 20% to 60% of the Available Roof Space as further detailed in the table below. Available Roof Space is defined as the total roof area minus areas designated for renewable energy, private terraces and residential outdoor amenity space (to a maximum of 2 m²/unit). A tower roof on a building with a floor plate less than 750 m² is also excluded from available roof space.



Gross Floor Area (Size of Building)	Coverage of Available Roof Space (Size of Green Roof)
2,000-4,999 m ²	20%
5,000-9,999 m ²	30%
10,000-14,999 m ²	40%
15,000-19,999 m ²	50%
20,000 m ² or greater	60%

The size of green roofs for new industrial buildings which contain a minimum gross floor area of 2,000 m² will be required to be the lesser of 10% of Available Roof Space or 2,000 m². This requirement does not affect industrial buildings constructed prior to January 31, 2011.

Are there any exceptions?

Residential buildings less than 6 stories or 20 meters in height are exempt from the requirement to build a green roof. For buildings where a green roof is required, developers may apply for a variance or an exemption. A variance allows for a smaller green roof than what is required under the Bylaw provided that a cash-in-lieu payment of \$200.00 per m² is made for the reduced green roof area. Where an applicant seeks a complete exemption from the green roof requirement, the applicant may apply to City Council and a cash-in-lieu payment of \$200.00 per m² must be made if approved.

Is there any financial assistance available?

The City of Toronto has implemented an Eco-Roof Incentive Program which is designed to promote green and cool roofs on commercial, industrial and institutional buildings in Toronto. The program provides funds for green or cool roof retrofit projects on existing commercial, industrial and institutional buildings and for 2010, will also provide funding for green roofs on new industrial buildings with a gross floor area of 2,000 m² (21,528 sq. ft.) or greater and new institutional

and commercial buildings less than 2,000 m². Eligible green roof projects will receive \$50 per m² up to a maximum of \$100,000. Eligible cool roof projects will receive \$2 to \$5 per m² up to \$50,000.

Applications are available online and the key dates for the fall session will soon be posted on the City of Toronto website. Priority will be given to buildings located in the City's designated "employment district" which are areas where the urban heat island effect is of particular concern.

It is important for developers building in Toronto to educate themselves on the requirements under the Toronto Green Roof Bylaw as the design, construction, and maintenance of green roofs must be in accordance with the Toronto Green Roof Construction Standard. Knowing the effective date may also motivate industrial building developers to construct industrial building or building additions prior to January 31, 2011. Although construction of a green roof is not required to existing buildings, existing building owners may also wish to learn more about green roofs because it applies to new additions, and in order for owners to benefit from the financial incentives available under the Eco-Roof Incentive Program.

For further information on green roofs and other helpful resources, please see <http://www.toronto.ca/greenroofs/>.

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What's a Resulting Trust?

Just because a person is the registered owner of property does not necessarily mean that the person is the true owner.

Just because a person is named as a joint tenant of a property, or of a bank account, or some other asset, does not mean that the person will be entitled to the property or the proceeds of the bank account or asset when the other joint tenant passes away.

Where a person transfers his or her property into another person's name gratuitously a resulting trust arises by operation of law in favour of the transferor. The law provides that the true ownership "results" to the person who made the transfer or who advanced the purchase money. The reason is that it would be unfair for a person to retain property that he or she did not pay for and was not intended to be a gift simply because he or she holds legal title. It is the recipient who must prove that a gift was intended by the transferor. There is an exception when the gift is from a mother or father to a minor child. In that event, there is a presumption of advancement, that is, there is a presumption that a gift was intended.

Mary Danicki was almost 102 years old when her court case against her 68 year old son was heard by the *Ontario Superior Court*. The trial judge called her a remarkable person who retained a zest for life and who had an engaging sense of humour. (Of course her sense of humour may have been somewhat alleviated after the decision).

Mrs. Danicki lived in her home with her son, Frank, his wife Mary and their 2 children. Mrs. Danicki lived downstairs while Frank and his family lived in the upstairs area.

Mrs. Danicki wanted to transfer her house to Frank. He was a good son. She went to a lawyer who, on two occasions, saw her separately and

apart from her son. She then transferred her house to her son subject to a life interest in her favour.

Sometime after making the transfer, she had second thoughts. She felt she had made a big mistake. Her daughter, who was a good daughter, was very hurt when she found out that her mother favoured one of her siblings.

Mrs. Danicki asked her son to give her back the house. She wanted to divide it evenly three ways so that her children would be treated equally. Frank said no.

Mrs. Danicki took her son to court.

The lawyer who had acted for Mrs. Danicki when she transferred her house to her son testified that Mrs. Danicki indeed understood what she was doing and wanted, at that time, to transfer the house to her son.

The trial judge, after hearing all the evidence including the testimony of the lawyer, said that it was apparent that Mrs. Danicki wanted to gift the house to her son and concluded simply that "A Gift is a Gift". Once the gift was made Mrs. Danicki could not take it back. The fact that she changed her mind was not enough.

Mrs. Danicki lost the case. The trial judge did not award costs to either party.

In a recent Alberta decision, Erika Luitenکو sued her former friend, Lada McAleer and her husband to get back title to her house. When Erika went to buy a house, she was told that she could not qualify for a mortgage. She asked her good friend Lada McAleer and her husband to buy the house in their names so that they would qualify for the mortgage.

Erika paid the deposit, the legal fees to close the transaction and the balance due on closing. The property however, was registered in the names of the McAleers. Erika lived in the home for two years. She paid her friends a monthly amount to cover the mortgage payments, municipal property taxes and insurance premiums. Erika paid for renovations and repairs.

The property increased substantially in value. After Erika had lived in the house for more than

two years, the McAleers sent a letter to Erika addressed to "Dear Tenant". The letter informed her that the McAleers wanted to sell the property and requested that Erika vacate "as soon as possible". After all, they thought the house was registered in their names. They testified that they had purchased the home as an investment property and that Erika was a tenant.

Erika took the McAleers to court. The trial judge found the behaviour of the McAleers to be unconscionable and that they lied under oath. The trial judge stated that the McAleers concocted their evidence to enable them to realize a significant profit. The trial judge held that the purchase was made by Erika in the name of the McAleers and that although the mortgage was taken out by the McAleers, the person who advanced the purchase money was

Erika.

The trial judge concluded that the property was held by the McAleers on a resulting trust for Erika. What was surprising is that the McAleers appealed the decision of the trial judge. The Court of Appeal however agreed with the trial judge that a resulting trust in fact had been created since there was a clear common intention by the parties that the property was to be purchased by the McAleers for Erika's benefit. The McAleers had to pay Erika's costs of the trial and the appeal.

Mary Ruth Barnes and Ernest Groves were involved in an intimate relationship for eight years. Groves, age 69, was the former Vice-President of Culligan Water. He was an astute businessman and investor who had been married for 47 years. He lived with his wife and had two adult daughters. Barnes was a real estate agent. She was divorced and had one adult daughter whom she lived with for most of the duration of her relationship with Groves.

Barnes came across a resale condominium unit which she thought would be a good investment. Although Groves put up all the money, about \$200,000.00, the condominium was registered in Barnes' name. Barnes moved into the condominium. Groves paid the occupancy costs. According to Groves, the condominium would be Barnes' principal residence so that when it was sold, there would be no capital gains.



Groves subsequently found out that Barnes (without telling him) mortgaged the condominium for \$52,000.00 and then used the funds to purchase a BMW. Barnes said that the condominium was a gift to her. It was also to serve as a place where the couple could meet and be together.

Although Barnes claimed that the condominium was a gift to her, she had signed a document stating that in the event of her death, the condominium would go to Groves. Barnes candidly admitted to the Court that she was a “kept woman” stating that Groves would give her approximately \$2,000.00 per month as support income because spending time with Groves prevented her from making enough money at her job. According to Barnes, the couple would vacation together and Groves was generous to her with gifts that included flowers, a wedding band, a Cartier Bracelet, earrings and a Volvo.

The Court looked at the evidence and considered, in particular, that the document signed by Barnes stating that the condominium would revert to Groves in the event of Barnes’ death did not support Barnes’ claim that Groves gifted the property to her.

The Court ordered that the property be sold and the proceeds used to repay Groves for the amount that he put up for the purchase with any profits from the sale to be divided equally between the two of them.

An upcoming issue will deal with a Constructive Trust, the Breakdown of a Romantic Relationship and 11,872 hours of work. It will also deal with a daughter once called “Chief Cook and Bottle Washer” who brought an action against her parents for the time spent assisting them (10,667.5 hours) and 4,070 hours taking care of her grandmother.

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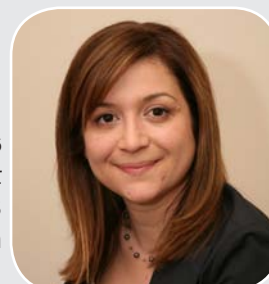


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Notice to Clients - Harmonized Sales Tax (HST)

As you are aware, the Province of Ontario will harmonize the existing 8% provincial sales tax (PST) with the 5% federal goods and services tax (GST) effective July 1, 2010. The Ontario harmonized sales tax (HST) will merge the existing PST and GST, for a combined rate of 13%. Generally, the new HST will apply to the provision of goods and services in the same manner as GST currently applies.

Currently, legal fees and certain disbursements are only subject to the 5% GST. However, effective July 1, 2010, legal fees will be subject to the full 13% HST. Likewise, those disbursements which are currently subject to the 5% GST will be subject to the 13% HST. By way of example, certain disbursements, such as government filing fees for incorporating a corporation, are not currently subject to the 5% GST and will likewise not be subject to the 13% HST.

For our business clients who are currently permitted to claim input tax credits in respect of GST, the new tax should have a minimal impact on your business as a full input tax credit should be available for HST paid on taxable goods and services, subject to certain restrictions. However, HST will result in increased costs for those clients who are not able to claim input tax credits.

It is important to note that any Canadian clients outside Ontario may be subject to the “place of supply” rule. Generally, if the billing address of the client is outside Ontario, the client will be subject to the sales tax rules of the outside province.

In an effort to reduce confusion regarding the applicable rates, where appropriate, we will be producing and mailing interim accounts for work completed up to and including June 30, 2010.



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Professional Notes

Samantha A. Prasad gave a presentation on Business Succession Planning to the Toronto chapter of the CGAs on February 16, 2010.

The 2010 ICSC Canadian Shopping Centre Law Conference took place in Toronto on February 25-26, 2010 and **Christina Kobi** co-chaired this conference. **Ian J. Cantor** was the breakfast roundtable leader for: Lease Remedies – Tenant Claims; **Stephen Posen** was the breakfast roundtable leader for: Insurance 101-releases, indemnities and waivers of subrogation; **Robyn Kestenberg** was the breakfast roundtable leader for: Leasehold Mortgages/Chattel Waivers; **Adam L. Perzow** was the breakfast roundtable leader for: HST and its effect on leases; and **Michael S. Horowitz** was a speaker for: The Repudiated Lease – What Can You Do?

Stephen J. Messinger and **Christina Kobi** hosted a Toronto CREW lunch and learn seminar on March 24th entitled "Recession or Recovery: Which Way is Up?" with speakers (John O'Toole and Sharm Powell) from CB Richard Ellis.

Howard S. Black presented a paper entitled Developments in Reproductive Technologies and Succession Law in Ontario at a conference entitled "The Advanced Intensive Program in Wills, Estates and Trusts" sponsored by Osgoode Hall Law School Professional Development on March 26, 2010.

Firm News

David T. Ullmann was interviewed in the March edition of *Precedent*. He was featured in the article "Secret Life: Shooting Star."

Tracy A. Kay presented a seminar on "Bill 168 - Violence in the Workplace" on April 15, 2010.

David Louis, Howard S. Black, Aaron S. Grubner and **Michael A. Goldberg** presented a seminar on succession planning on May 31, 2010.

Minden Gross LLP will be a sponsor at the 12th Annual STEP Conference in Toronto.

A. Irvin Schein and Hayden Creque co-authored an article entitled "A Primer on Retaining & Relating to Outside Counsel" which appeared in the March issue of the ACC Docket.

Raymond M. Slattery, Kenneth L. Kallish, A. Irvin Schein, Samantha A. Prasad and **Brian J. Temins** attended the Meritas Annual meeting in Los Angeles held April 7-9, 2010. Irvin was a co-chair of the session: Litigation Systems Around the World, Samantha was a panelist for the session: Social Networking for Lawyers and Ken was a co-chair to the session: How Your Firm Can Capitalize on the ACC Value Challenge.

Stephen J. Messinger was a seminar leader at the Georgetown Advanced Commercial Leasing Institute in Washington on April 7-9, 2010.

Stephen J. Messinger was a presenter at the ICSC JTR School for Professional Development in Scottsdale, AZ on April 19-23, 2010.

Christina Kobi will co-chair the 2011 ICSC Canadian Shopping Centre Law Conference on February 24-25, 2011 and **Michael S. Horowitz** will continue serving as a member of the Conference Program Planning Committee.

Reuben M. Rosenblatt Q.C., LSM, was a contributor and speaker at the Law Society's Annual Real Estate Summit, April 21 and 22, 2010 on the topic of Resulting Trust.

Howard S. Black appeared on Money Talk on May 3rd, 2010 to discuss whether all relationships are created equal in estate planning.

We are pleased to announce that four partners in our Commercial Leasing Group, **Stephen Posen, Stephen J. Messinger, Robyn Kestenberg** and **Christina Kobi**, were recently ranked as Leading Property Leasing Practitioners (Canada) in The Canadian Legal LEXPERT Directory 2010. **Stephen Posen** and **Stephen J. Messinger** were also named as two of Canada's most frequently recommended property leasing lawyers by the 2010 LEXPERT/American Lawyer Guide to the Leading 500 Lawyers in Canada.

Minden Gross had the honour of contributing the Property Leasing articles in the 2009 and 2010 LEXPERT publications highlighting recent developments of importance.