



From left to right: Miles Feltmate, Simon Holmes of Simply Living Inc., Bruiser, Paul Lawson, Yvan Cournoyer and Demetrius Tsafaridis of SteelCare Inc. at the 5th Annual Hamilton Bulldogs Charity Golf Classic.

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Is It Time To Update Your Will?

Changing personal circumstances can make your existing will ineffective at protecting your beneficiaries and ensuring your wishes are carried out. It may be time to have it reviewed.

Changing circumstances can include: changes in your marital status or that of your ex-spouse, new children, newly acquired property, citizenship, life insurance, private corporate interests, assets in other countries, joint ownership of assets, beneficiaries who develop special needs, and many more.

Please join Lori Brown, Wills and Estates lawyer, for an informative session on what you need to consider when creating wills and powers of attorney that are right for your current circumstances.

TWO SESSIONS WILL BE HELD:

Session 1: Thursday, Nov 6th from 6:30 - 7:30 pm

Session 2: Friday, Nov 7th from 12:00 - 1:00 pm

LOCATION:

Feltmate Delibato Heagle Oakville Law Office, 2010 Winston Park Drive,
Suite 301 Oakville.

RSVP: Please call Kim Lovatt at 905.287.2213 or email her at klovatt@fdhlawyers.com.

Seating is limited. Refreshments will be served.



Feltmate Delibato Heagle

L A W Y E R S

Living Happily With Your Lawyer

By Brian Heagle

Client: "Here's my cheque for your retainer. I get to ask two questions, right?"

Lawyer: "Absolutely. What's the other question?"

In real life, the relationship with your lawyer is no joking matter. A legal matter can often be complex, uncertain and, yes, intimidating. How you work with your legal counsel may prove to be the most important factor in achieving both satisfaction and success.

Hiring a lawyer is really an exercise in setting and managing expectations. Of course, you need someone experienced in the area of law involved; a referral is usually best, especially from a trusted source who has actually used the lawyer's services. However, it is also important to connect on a more personal basis. Choose an individual or firm whom you enjoy dealing with. After all, if you are going to be in this together, it should be a good fit.

Before and after the lawyer is retained, you must be candid at all times. If you feel reluctant to speak up, chances are the hiring criteria did not focus enough on the interpersonal connection. Whatever the reason, you only serve to undermine your own cause by withholding or misrepresenting essential facts. Similarly, your lawyer needs to have the same kind of openness and directness with you.

Both parties should also listen carefully to each other, even if they do not like what they hear. For example, if you lack confidence in the legal services being provided, that overriding concern needs to be expressed clearly and directly. Failure to communicate and discuss such fundamental issues is at the root of many relationship breakdowns. It is no different in the lawyer-client context.

To help avoid a blockage in that communication channel, periodic reviews of your ongoing relationship can be set up to address general issues of timeliness, billings, etc. - whether in person, by telephone or email. This idea may be resisted by some lawyers, particularly if they are exceedingly busy or somewhat fearful of feedback. However, it actually creates the opportunity to evaluate how both parties are fulfilling expectations. It can also strengthen your business connection.

As part of being candid, billing arrangements must be established up front (from hourly rates and estimated fees, to retainers and payment terms). Neither party should be shy or misinformed about this subject. Law is a business. Clients are asked to pay after-tax dollars for legal services, so they need to be aware of the financial commitment, which can be significant. If payments are not made on time, the message is that the client does not value the work

performed nor take it seriously.

If you expect or want prompt attention, it should not be a surprise that consciously or not, your lawyer will tend to deal first and foremost with paying clients. It is not a secret that most private companies follow that practice. Lawyers, however, sometimes ignore or forget to talk about payment history when non-paying clients demand attention. It is incumbent on both parties to be aware that payment does not become the real, unspoken issue between them.

Getting results is also about recognizing that lawyers have multiple priorities placed on their time. To put it bluntly, you need to get in line. Fortunately, there are relatively easy ways to do this. Advance warning is one way. Involve your lawyer in the process early, even if it is a quick heads-up to let them know something is happening in your world that may require timely legal attention (cell phones, Blackberries and similar devices make this task nearly effortless). That discussion may also serve to avoid a legal misstep. Be prepared and organized. Provide a brief agenda or memo, including materials to review. A lawyer's productivity greatly depends on knowing precisely what is to be accomplished. A little effort to perhaps save a lot of time and money in the long-run.

On occasion, you may discover a friend or family member has a different opinion than your lawyer, or you attempt to do some or all of the legal work yourself. It is instructive to remember that your facts are unique, the law is always changing and, for those reasons, you are paying an expert for guidance. Commit to and rely on your lawyer to get your money's worth - unless and until you are absolutely convinced or forced to abandon the original plan.

A lawyer can be an integral part of your advisory team. You should assemble over time a complimentary group of legal, tax, insurance, financial and other advisors. Ensure that they are aware of each other. Such awareness leads to sharing ideas to better protect and benefit your interests. Also consider your lawyer to be a resource for referrals and other opportunities (including the chance to be profiled in a newsletter or to sponsor a community or charitable event).

It is important to take a proactive and preventative approach to your legal needs. If you follow that path, it should lead to a more effective and cost-efficient relationship with your lawyer - and a much healthier, happier one too.

Oakville Billboard Battle

By Cam Neil

Many of our readers, particularly those who live or work in the Oakville area, may find it interesting to know that a battle has been raging for years over the town's anti-billboard by-law that has reached the highest courts of both Ontario and Canada.

There are no billboards in Oakville, such as you find throughout Hamilton and the Greater Toronto Area, and which not infrequently, display the advertising of our colleagues in the personal injury bar.

The lack of billboards in Oakville may not have been noticeable, as it is difficult to notice something missing that was never there in the first place. But noticeable or not, and despite the town's best efforts, the Oakville landscape is on the verge of change.

First some background. In 1994, the Town of Oakville passed a by-law imposing a total ban on billboard advertising within its borders. Its justification for the ban included preservation of the town's unique character, prevention of aesthetic blight and driver distraction. A referendum was held on the issue in 2000, but a lack of eligible voter turn-out led to the results of the referendum not being legally binding.

In 2002, the issue reached the Ontario Court of Appeal in *Vann Niagara Ltd. v. The Corporation of the Town of Oakville*, which held that the by-law was unconstitutional as it violated freedom of expression protected under section 2(b) of the Canadian Charter of Rights and Freedoms (the "Charter"), overturning the decision of the Superior Court of Justice which ruled in favour of the Town's by-law.

The applicant in the case, Vann Niagara Ltd., now known as Vann Media Group Inc. ("Vann"), is an advertising company that seeks to erect billboards for its clients across the Oakville landscape, limited, however, to those areas of the Town that are not residential or heritage zones.

The Court of Appeal held that expression that is commercial expression is expression none-the-less, and is protected under section 2(b) of the Charter. The by-law was quashed as being overly intrusive on that freedom and the Court of Appeal granted the Town an opportunity to re-word the by-law to allow the billboard advertising restriction to be minimally intrusive and in compliance with the Charter.

Oakville's appeal to the Supreme Court of Canada was limited to the narrow issue of the Town's right to restrict the size of billboard signage to certain dimensions. The Supreme Court held that to be a minimal restriction on freedom of expression and therefore not a

violation of the Charter's right to freedom of expression.

The courts have had to grapple with this issue in other municipalities as well. A complete ban on billboards was allowed in the Township of Nichol, a small rural municipality. In Burlington and Stoney Creek the court both upheld and quashed by-laws restricting the type, size and location of signs, depending upon the degree of justification given by the city. In Scarborough, a cap on the number of billboards was upheld.

In Oakville, extensive consultations ensued and a new by-law was passed, only to be struck down yet again by the Superior Court of Justice earlier this year on a further application brought by Vann. Justice Gray in his decision said of the revised by-law, "It is evident that whether or not it was the municipality's intent, the result of the [revised] by-law is to effectively ban billboard advertising in Oakville". He went on to conclude as follows, "while the objectives of the municipality in preventing urban blight and minimizing driver distractions are pressing and substantial, the Town has not shown that the means chosen to achieve these objectives are justified". He held that the revised by-law did not minimally impair Vann's constitutional rights and it was quashed accordingly.

Again, the Town of Oakville has been given time to re-draft the by-law, and the battle will presumably rage on. In the meantime, the Town was directed by the Court to grant Vann the necessary permits to erect billboards within non-residential areas. As a result, our colleagues in the personal injury bar are now permitted to display the proverbial question across the Oakville horizon: "Injured?".

FDH News & Legal Tidbits

- On July 15, 2008 **Paul Lewis** spoke to the Rotary Club of Burlington Lakeshore on avoiding wrongful dismissal actions, the June 2008 changes that impact the Ontario Human Rights Commission and the manner in which human rights complaints will be administered/adjudicated
- **Ron Weston** has been invited to participate in the Hamilton Law Association's Corporate Practice Group, which organizes seminars on basic and emerging issues in corporate law
- **Cam Neil** has been elected a Director of the Oakville Chamber of Commerce. His election was announced at the Chamber's 54th Annual President's Dinner which took place on September 23, 2008
- **Brian Heagle** has been elected Chair of the YMCA of Hamilton/Burlington. As Chair, Brian will be helping to lead the YMCA of Hamilton/Burlington on its expansion when it officially merges with the Brantford YMCA in 2009
- **Debi Sutin** will speak at the Seminar Series taking place at The Canadian Franchise Association's Franchise Show on Sunday October 26, 2008 and will moderate a panel discussion on "Surviving and Thriving in Tougher Economic Times" at the Ontario Bar Association's 8th Annual Franchise Law Conference being held on November 25, 2008
- **Feltmate Delibato Heagle** sponsored the following charity golf tournaments over the past summer:
 - 5th Annual Hamilton Bulldogs Charity Golf Classic held in support of the Bulldogs Foundation and Big Brothers Big Sisters of Hamilton & Burlington;
 - Oakville Chamber of Commerce Golf Tournament attended by Cam Neil and guests;
 - Burlington Chamber of Commerce Golf Tournament attended by Paul Lewis and guests;
 - Diamond Sponsor of the 7th Annual YMCA-Brady Financial Group Golf Classic which raised more than \$60,000 in support of the YMCA Hamilton/Burlington



*(from left to right):
Wayne Ruttle (Adflow Networks),
Mirco Durante (Durante Group of
Companies), Bruce Heagle (NSBL
International) and Brian Heagle.*

F E E D B A C K :

We are always interested in hearing what you think about our Newsletter. If you have any comments or suggestions, or a topic that you would like to see covered, please contact our Editor, Debi Sutin at 905-631-3643.

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