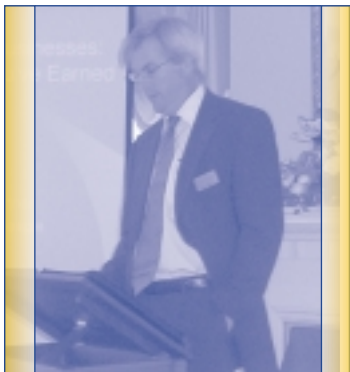


FDH Seminars

Franchising in Ontario and Beyond, a seminar presented by **Debi Sutin, Tibor Sarai and Markus Cohen, Q.C.** on April 22, 2004, was the kick-off to a continuing series of breakfast seminars to be held throughout the coming year. The Seminar was well attended and the feedback confirmed that it was both informative and well-presented.



*Our franchise seminar held on April 22, 2004 at Paletta Mansion
Picture shows, left to right, Markus Cohen Q.C., Tibor Sarai and Debi Sutin.*



*Ron Weston speaking at the
June 9th Seminar.*

On June 9, 2004 we hosted a seminar entitled ***Organizational Structures and Succession Planning for Family-Owned Businesses***. A large gathering received advice and pointers on asset protection strategies, taxation and other estate planning techniques applicable to family-owned businesses from **Ron Weston, Peter Welsh, Lawrence Rotenberg** and guest speakers, **Trevor Hood**, valuations manager, Scott Batenchuk & Company LLP and **Ian Hull**, estate and trust litigation lawyer with Hull & Hull.

Upcoming FDH Seminars

Fall 2004 - Employment Law

If you wish to be placed on the invitation list for our seminars, please call Pam Teckoe at 905-631-3654 or email her at pteckoe@fdhlawyers.com. For confirmed topics and dates visit the Upcoming Events section of our website at www.fdhlawyers.com.

JULY 2004

Suite 200, 3600 Billings Court
Burlington, ON L7N 3N6
Telephone: 905.639.8881
Fax: 905.639.8017
Toll Free: 1.800.636.6927

Suite 301, 2010 Winston Park Drive
Oakville, ON L6H 5R7
Telephone: 905.829.3200
Fax: 905.829.3277
Toll Free: 1.800.636.6927

www.fdhlawyers.com

In This Issue...

- FDH Seminars
- Collaborative Family Law
- The New Home Offer - Eyes Wide Shut?
- FDH News
- FDH Contact Information



Feltmate Delibato Heagle

L A W Y E R S

Collaborative Family Law

By Gordon Morton

Collaborative Law has been termed one of the most profound developments in the legal profession. The single most important characteristic of collaborative law is the commitment to seeking settlement of a dispute without resort to litigation. Counsel who wish to participate in the collaborative law process receive specialized training in the concepts and methods of both collaborative law and alternative dispute resolution and have made a commitment to resolving family law disputes without resort to litigation.

The increase in the number of self-represented litigants in our courts is, in part, no doubt driven by the high cost of going to court. Furthermore, the delay in the family courts has been growing exponentially and will be further increased when the new Family Court Rules are imposed upon all jurisdictions in the province. The collaborative law process can be a solution and is a welcome response to these problems.

The role of the lawyer in the collaborative law process is to facilitate the development of a voluntary settlement, without the threat or use of power. The approach requires good faith on the part of all parties and reduces the tendency for counsel to resort to their well-developed adversarial skills when the going gets tough. The contrast of this approach with the traditional role of prosecuting or defending legal actions is revolutionary. There is a contractual obligation of the part of collaborative

law lawyers to withdraw if any party chooses to abandon the collaborative law approach.

Collaborative law is a method of resolving clients' problems in a cost-effective, efficient and constructive manner with a view to maximizing a successful outcome for all parties. The parties are empowered and become proactive in the process of resolving the dispute. This contrasts starkly with the litigation process where the parties have little control over the process. The process also allows the parties to control the cost of the resolution of their dispute unlike the litigation process where costs can easily and quickly spiral out of control.

Each party in the collaborative law process must commit to maintaining a high standard of integrity. Specifically, they agree to not take advantage of the other's miscalculations or inadvertent mistakes and agree to a process of full and frank disclosure and good faith negotiation.

The role of legal counsel is to provide the framework within which the parties can seek a resolution of their dispute. They provide help with communication, identify issues, ask questions, make observations, suggest options and assist the parties to express their needs, goals and feelings. They will also check the viability of proposed solutions and prepare financial statements, net family property statements and, finally, the separation agreement.

A collaborative law counsel must withdraw from the case as soon as

possible upon learning that his or her client has misrepresented information or otherwise has acted so as to undermine or take unfair advantage of the collaborative law process. As mentioned above, no counsel representing a party in the collaborative law process may represent that party if the matter proceeds to litigation.

The collaborative law practice group in Hamilton/Burlington, of which I am a member, has been established for over two years and has approximately 21 members. For more information or to obtain contact information on any of our members, please visit our web site at <http://www.collabfamlaw.com/>.

D. Gordon Morton is Family Law Counsel to Feltmate Delibato Heagle LLP

The New Home Offer - Eyes Wide Shut?

By Fulvio J. Delibato

You are reading the newspaper on a fine Saturday morning and, having spent your time indoors the previous Saturday, you are ready for something different. Your partner, who is absorbed by the new homes section of the paper suddenly exclaims, “Hon, it is sunny and we have a few hours today; let’s go visit a few new home sites.” To please your partner, you go ahead with the plan. Off you both go, and that same afternoon, you are both enamoured with the model home in a beautiful sprouting subdivision in the “burbs”.

The builder’s representative attempts to review the Agreement of Purchase and Sale with you but all you really care about is the price while your partner is deep in thought regarding the various finishing touches and material options. After all, what is there to worry about? Sure, it’s a dozen long pages or so of fine print, but it is all standard isn’t it? Besides, what does one have a lawyer for?

Purchasing a new home from a builder can be a beautiful and rewarding experience. However, one cannot proceed with blinders on. You must be aware of some fundamental matters found in most Agreements of Purchase and Sale for new homes. You will then be in a better position to decide whether to purchase from a builder or consider a re-sale home.

The Ontario New Home Warranty Program requires that every Agreement of Purchase and Sale for the purchase of a new home include an addendum disclosing certain matters that may be contained in the builder’s Agreement of Purchase and Sale. These matters affect, and may ultimately be detrimental to, your rights as Purchaser of a new home. Some of these matters are discussed below.

The Agreement of Purchase and Sale may provide that the builder has a right to terminate the Agreement if, in his sole and unfettered discretion, he is not satisfied with the economic feasibility of the project by a certain fixed future date. Accordingly, make the necessary inquiries or look for such a clause in the Agreement. . If there is such a provision, ask whether the builder has made its determination regarding the feasibility of the project. If it has, the provision entitling the builder to terminate in the future should be

deleted. If such a determination has not yet been made by the builder, you must assess your willingness to proceed in view of this uncertainty.

This same assessment must be made with respect to the builder’s right to extend. The Ontario New Home Warranty allow a builder to extend the closing date of the transaction, as may be required. Regardless of what the Agreement may provide in terms of extension rights, the Ontario New Home Warranty Program limits these rights to extend to exceed 120 days, unless the Purchaser agrees in writing to further extensions. Consider carefully the full impact of such extensions to your situation. The stage of completion of the subdivision may be a better measure to guide you than are the dates specified in the Agreement.

Another caution given by the New Home Warranty disclosure provisions is the builder’s right to alter plans and specifications or to substitute materials. Some Agreements allow for these alterations and substitutions without notice to the Purchaser. Although most Agreements do provide that any substitution of materials be done with materials of equal or better quality, quality is a subjective determination. It is best to ensure that the Agreement provides limitations on the builder’s right to alter plans or make substitutions.

One should also be aware that the purchase price is subject to increase for realty tax adjustment and other charges, set out in fine print.

This discussion has not been made to dissuade you from considering the purchase of a new home, only to bring to your attention the importance of carefully reviewing the Agreement, or having it reviewed by your lawyer, prior to executing it. In fact, the Agreement should provide for a review period following signing, with the opportunity to change your mind within that review period.

The purchase of a new home can be a wonderful and exciting experience. With the proper understanding of the issues raised in the Agreement of Purchase and Sale, one can embark upon the experience with confidence. Do so with your eyes wide open.

FDH News

- **Cam Neil** who has spent this past year articling with Feltmate Delibato Heagle will be called to the Bar of Ontario on July 22nd. Prior to that, on July 17th, Cam will be getting married to Darcy Fairfield. He will then be joining us as a lawyer practicing out of our Oakville office.
- **Feltmate Delibato Heagle LLP** was proud to sponsor the Women of Courage Luncheon series in support of Interim House, a Mississauga-based shelter for women and children. The series included luncheon addresses by Erin Brokovich, Hazel McCallion, long-time Mayor of the City of Mississauga and Betty Mahmoody, author of "Not Without My Daughter".
- We were also proud to be a Platinum sponsor of Burlington's Sound of Music Festival. The 4-day event celebrated its 25th anniversary this year and remains Ontario's largest free music festival. **Brian Heagle** served as master of Ceremonies for the Grand Opening Festivities and

for the Performing Arts Burlington stage. **James Tuck** served as a director on the Festival's Board and chaired the committee responsible for the licensed venues.

- **Debi Sutin** has been asked to write an article for publication in the Franchise Law Journal of the American Bar Association's Forum on Franchising. The Journal will be published in October 2004 to coincide with the 2004 Annual Forum on Franchising Conference.
- **Brian Heagle** was elected to a second term as a director of Burlington Basketball and has also been appointed Vice-President and Secretary of that organization.
- We have added a **Photo Gallery** to our website where pictures from events hosted by Feltmate Delibato Heagle LLP or events in which lawyers from the firm have participated will be posted on a regular basis.

BURLINGTON OFFICE

- Miles Feltmate** - Managing Partner
Corporate/Commercial
Direct Line: 905-631-3653
- Fulvio J. Delibato** - Real Estate, Wills, Family Law
Direct Line: 905-631-3644
- Ronald Weston** - Corporate/Commercial, Real Estate
Direct Line: 905-631-3656
- Brian Heagle** - Corporate/Commercial
Direct Line: 905-631-3642
- Ian Macmillan** - Litigation
Direct Line: 905-631-3645
- Paul Lewis** - Litigation
Direct Line: 905-631-3650
- James Tuck** - Corporate/Commercial, Litigation, Real Estate
Direct Line: 905-631-3646
- Debi Sutin** - Corporate/Commercial, Franchise Law
Direct Line: 905-631-3643

OAKVILLE OFFICE

- Steven Follett** - Corporate/Commercial, Commercial Real Estate
Direct Line: 905-287-2204
- Tibor Sarai** - Litigation
Direct Line: 905-287-2205
- Vin Tsui** - Corporate/Commercial
Direct Line: 905-287-2206
- Dan Caldaroni** - Corporate/Commercial
Direct Line: 905-287-2207
- Cam Neil** - Student-At-Law
Direct Line: 905-287-2200

COUNSEL

- Gordon Morton Q.C.** - Family Law
Telephone: 905-522-8147
- Lawrence A. Rotenberg** - Tax and Estate Planning
Telephone: 905-627-8748
- Peter Welsh** - Corporate/Commercial
Telephone: 905-337-3121
- Markus Cohen Q.C.** - Trademark, Franchise Law
Telephone: 416-413-9822
- Arlene D. Wolfe** - Corporate/Commercial/Securities
Direct Line: 905-287-2209
- Pam Teckoe** - Director Of Administration
Direct Line: 905-631-3654



Feltmate Delibato Heagle is a proud sponsor of the Mississauga Hurricanes Novice Rep Level Girls' Fastball Team.