



THE FINE PRINT

Summer Events



Left to right: Bruce Heagle of NSBL International, Wayne Ruttle of Adflow Networks, Brian Heagle and Paul Lewis at the YMCA Charity Golf Tournament.

From left to right, Cam Neil with Nick Haley, President of Liquid Capital, Lourdetta Galeway of Array of Windows (Plus) and Ray Ellis of AArray Financial Group at the 2nd Annual Oakville Chamber of Commerce Golf Tournament.



Upcoming FDH Seminars

Fall 2004 - Employment Law

Winter 2005 - Dealing With Your Business Partners

If you wish to be placed on the invitation list for our seminars, please call Jenee Weesies at 905-287-2216 or email her at jweesies@fdhlawyers.com. For confirmed topics and dates visit the Upcoming Events section of our website at www.fdhlawyers.com.

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In This Issue...

- FDH Seminars
- Foreign Judgments Welcome in Ontario
- Raising Capital for Your Business
- FDH News
- FDH Contact Information



Feltmate Delibato Heagle

L A W Y E R S

Foreign Judgments Welcome in Ontario

By Tibor Sarai

Anyone who has ever had any dealings with the law knows the old adage: “A paper judgment is not worth the paper it is written on”. Indeed, no amount of judicial paper or pronouncements of the Court will ever be a substitute for the actual delivery of monies and compensation. As any competent lawyer will tell you, the first question is, “if there is a cause of action, where at the end of the often long and expensive road is the reward?”

The usual vagaries and risks associated with litigation, and the sometimes “iffy” prospect of collecting a judgment or enforcing an award, are amplified when the assets of the defendant or judgment-debtor are outside of the jurisdiction. The path to collection and enforcement is thus sometimes doubled or tripled in difficulty, owing to the inter-jurisdictional and international law aspects that have to be brought to bear to enforce a judgment. With the introduction of the Inter-Jurisdictional Support Orders Act (“Act”), an Ontario law which came into force in 2002, the prospect for enforcing child and spousal support awards has been vastly improved.

The Act provides for both orders and judgments granted in Ontario to be enforced in outside reciprocating jurisdictions, as well as for enforcing in Ontario, orders and judgments made in these reciprocating jurisdictions. Part III of the Act deals specifically with the enforcement of orders made in reciprocating jurisdictions within, and outside of, Canada in respect of

support orders, temporary support orders and orders varying support.

The enforcement provisions of the Act require that the claimant or the appropriate authority of the reciprocating jurisdiction deliver a certified copy of the order or judgement to the designated authority, in Ontario the Family Responsibility Office, together with information and circumstances regarding the judgement debtor who is resident in Ontario. In turn, the Family Responsibility Office forwards this information to the Clerk of the Ontario Court closest to where the judgement debtor is believed to reside.

The Clerk of the Ontario Court then registers the order or judgement as if it were an order of the Ontario Court, with the legal effect and enforceability as if it had been made in Ontario. The judgement debtor will be given notice of the registration and may, within 30 days, bring a motion before the Ontario Court to have the judgement set aside. The Court may set aside the registration only if it determines that, in the proceeding where the order was originally made, there was no notice or reasonable opportunity to be heard, if it is contrary to public policy or if the original Court did not have jurisdiction to make the order.

It is important to keep in mind that the registering Court and the designated authority can only do as well as the information provided. In other words, the foreign order has to be translated, if it is from a non-English speaking jurisdiction. It also has to be certified

with respect to its status. That is, it should be clear on the evidence that the judgment is still valid and that it has not been appealed or overturned.

The Act is extremely useful in the family law, spousal and child support areas. However, it does not apply to commercial judgments. Generally, Canadian Courts will enforce foreign judgments along the lines that are set out in the Act. The Courts will consider the procedural basis, the jurisdictional basis as well as the public policy elements in determining whether to accept registration and enforcement of a foreign judgment. This is done by commencing an action in Ontario, setting out the facts upon which the foreign judgment was obtained and then asking the Court to register the Judgment and to issue it in Ontario. Of course, the defendant has at its disposal all of the procedural and legal defences that are ordinarily available to any defendant in Ontario.

It is suggested that, in this age of increased international trade and contractual transactions, Ontario ought to consider an inter-jurisdictional enforcement of foreign judgments in the commercial field, similar to the Inter-Jurisdictional Support Orders Act.

Tibor Sarai is able to assist his clients in French, German and Hungarian.

Raising Capital for Your Business

By Dan Caldarone

A business, to be successful, requires sufficient capital to properly finance its activities. The means of raising capital are generally limited to (i) debt financing (a loan by an investor); (ii) equity financing (the issuance of shares to an investor); and (iii) a combination of both. When raising capital for your business, consideration must be given to the effect of provincial securities laws.

In Ontario, the Securities Act and its rules and regulations (the “Act”), an unwieldy set of documents of approximately 2600 pages, regulate the trading of securities. To understand these regulations, one must know the following key definitions: (i) “security”, which is very broadly defined to encompass both debt and equity; (ii) “trade”, which includes any sale for valuable consideration, including any act or advertisement in furtherance of a trade; (iii) “distribution”, which means a trade (a) in securities not previously issued, or (b) by a person holding a sufficient number of securities to materially affect the control of the subject corporation or entity; and (iv) “issuer”, which means an entity which has issued or proposes to issue securities. The Act requires that all persons involved in trading securities must be registered and that any distribution of securities must be made pursuant to the preparation and filing of a prospectus.

Compliance with the registration and prospectus requirements of the Act is

extremely costly, both in time and money. However, exemptions from these requirements are available in certain circumstances, the most common of which are the following:

1. Closely-Held Issuer Exemption

A “closely-held issuer” (an issuer that meets certain criteria under the Act) is permitted to raise up to \$3,000,000 from a maximum of 35 investors pursuant to any number of financings. This exemption applies to both the issuance of shares by a closely-held issuer and the transfer of shares by a shareholder of a closely-held issuer.

2. Accredited Investor Exemption

This exemption allows an issuer to raise an unlimited amount of money from any number of “accredited investors” pursuant to any number of financings. The list of “accredited investors” in the Act includes banks and other financial institutions as well as individuals that meet prescribed financial net worth tests. This exemption applies to both the issuance of shares by an issuer and the transfer of shares by a shareholder of an issuer, in each case to an accredited investor.

3. Exemption for Trades to Employees, Senior Officers, Directors and Consultants

This exemption permits the trading of securities of an issuer by (i) the issuer; (ii) a person holding a sufficient number of such securities to materially affect the control of the issuer; and (iii) current or former employees, senior

officers, directors or consultants of the issuer (including a holding company or spouse of any of the foregoing), in each case to any of the persons listed in (iii) above.

Finally, it should be noted that securities issued or sold in reliance upon one of these exemptions cannot be resold except in reliance upon a further exemption or until the issuer “goes public”.

These exemptions allow businesses to raise capital without complying with the onerous registration and prospectus requirements of the Act. To use any of these exemptions, however, a number of conditions must be met, prescribed information must be provided to prospective purchasers and specified documentation must be filed with the Ontario Securities Commission. A detailed discussion of these conditions is beyond the scope of this article. However, it is imperative that any proposed financing transaction, irrespective of size, which is to rely upon one of these exemptions be reviewed by experienced legal counsel to ensure compliance with these conditions and with the Act generally.

FDH News

- **Dan Caldarone** was a Business Law instructor during this summer’s Bar Admission Course of the Law Society of Upper Canada. The Bar Admission Course is the final instruction for Ontario law students prior to their Call to the Bar.
- **Feltmate Delibato Heagle LLP** has been selected to serve on the *JBMH Gift Planning Advisory Council*, an advisory group established by the Joseph Brant Memorial Hospital Foundation. **Tibor Sarai** will be the firm’s representative on the Council, which comprises top professionals from the Halton community.
- **Debi Sutin** has joined the Board of Directors of Tourism Burlington which works together with the Burlington Chamber of Commerce and the Burlington Economic Development Corporation to actively promote and enhance the Burlington community.
- **Markus Cohen, Q.C.**, Trademark and Franchise Counsel to Feltmate Delibato Heagle LLP, has received his certification from the Law Society of Upper Canada as a Specialist in Intellectual Property Law (Trademarks). Markus was also one of 11 Canadian lawyers nominated for inclusion in the recently published 4th edition of *The International Who’s Who of Franchise Lawyers*, and one of the two most highly nominated in the country.
- Litigation lawyers **Tony Ross** and **Kevin Scullion** are now associated with our firm and will be working

out of the Oakville office. Tony, who is also a member of the Bars of Nova Scotia and St. Kitts & Nevis, focuses his practice primarily on First Nations’ matters and in the areas of commercial litigation and construction disputes. Likewise, Kevin acts on behalf of a number of First Nation clients, with his practice also including commercial, personal injury and estate litigation. Tony and Kevin represent the residents of Aazhoodena at the current Inquiry into the OPP shooting of Dudley George at the Ipperwash Provincial Park in 1995.

- **Debi Sutin** will be speaking at the Ontario Bar Association’s 4th Annual Franchise Law Conference on October 29, 2004 in Toronto. She will be presenting a workshop entitled “Complex Issues in the Preparation and Use of Disclosure Documents”.
- **Feltmate Delibato Heagle** was again proud to be a Platinum Sponsor of the YMCA’s Golf Classic in support of its Strong Kids Program, which raised over \$42,000. **Brian Heagle**, who was on the tournament organization committee, and **Paul Lewis** participated in this year’s event (see picture on front page).
- **James Tuck** was re-elected to the Board of Directors of Burlington’s Sound of Music Festival for 2005. The Sound of Music Festival is a free, outdoor music festival which takes place each year in June on the Burlington waterfront. James will continue as Chairperson for the licensed venues at the Festival.

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