



FDH Hosts Business After 5

On December 8, 2004 we hosted **Business After 5** in conjunction with the Burlington Chamber of Commerce. The festive event was well attended by members of the Burlington Chamber and by our clients and friends. Many thanks to all of you who attended and helped to make this event a success.



Tamer Fahmi of Hearth & Home Realty and Fulvio Delibato welcome Santa.



Miles Feltmate with Pam Eddenden of Performing Arts Burlington.

Upcoming FDH Seminars

January 27, 2005 - Employment Law

February 24, 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.



Cam Neil (third from left), welcomed Ted Kotschorek of Stonecroft+Partners, Ralph Robinson, Town of Oakville Councillor - Ward 1, and Susan Sheppard, Executive Director of the Bronte Butterfly Foundation to our Oakville office in October.

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Feltmate Delibato Heagle

L A W Y E E R S

Multiple Wills

By Lori K. Brown

Over the last few years, there has been an increased interest in the use of “multiple wills” as a financial planning tool. Are they a good idea? Yes. Are they for everyone? No. Are they worth investigating? Yes.

Anyone operating his or her own business or who has significant assets in a private company is advised to do some simple math to determine the amount of money that may be saved through the use of multiple wills.

The traditional process of administering a deceased’s estate was to apply to the court for “probate” (now called “Certificate of Appointment of a Trustee with a Will”) and to pay “probate fees” (now called “estate administration taxes”) on the total value of a deceased’s estate. Probate fees tripled in 1992 to approximately 1.5%, or \$15,000, on each million dollars’ worth of assets in the estate.

Since then, avoiding probate fees has become a high priority for those involved in estate planning. One of the solutions found to avoid, or reduce, probate fees is the concept of a creating multiple wills.

A favourable decision of an Ontario court in 1998 has resulted in the use of multiple wills being a valid probate planning strategy. In that case, the deceased had prepared two wills, one covering shares in certain private corporations, valued at approximately \$25,000,000, and a second will covering the balance of his assets, valued at approximately \$3,000,000. Probate was required in respect only of the second will, resulting in a saving of probate fees of approximately \$375,000.

Most banks and other financial institutions will require the probating of an estate containing assets considered to have a “public” aspect, such as real estate, shares in a public

company and bonds. However, shares in a privately-held corporation can be transferred to the beneficiaries without the necessity of probate if the other shareholders in that corporation agree. It makes sense then for an individual holding shares in a private company to isolate those shares from the balance of his or her assets so that, upon death, those shares can be transferred to the named beneficiaries free of the probate process and free of the payment of probate fees.

As with any other proper financial planning tool, the cost savings which can be achieved through the use of multiple wills will likely make up for the additional cost of one or more additional wills. It would certainly be worth the effort of consulting with professional advisors specializing in estate planning to determine if multiple wills may be beneficial to your particular situation.

Lawyer Profile - Lori K. Brown



Lori joined the firm on November 1st of this year and brings with her a wealth of knowledge and experience, having spent many years involved in all aspects of Estates and Trust matters. Prior to joining us, Lori was a Director of Tax and Estate Planning with a national life insurance company in Oakville and before then, a Wills and Estate Planning Consultant with CIBC Trust.

Lori also spent almost 10 years in private practice where her practice was devoted to Wills and Estates, Family Law and Real Estate. She has written and spoken extensively to numerous professional groups and their clients on a variety of estate planning issues.

Oppression Remedies - Part 1

By Ian R.A. Macmillan

The Kurds, like many societies in this have and have-not world of ours, have few, if any, remedies for their oppression.

Shareholders in Canadian corporations, federal and provincial, public and private, are more fortunate. The last 25 years of western society could be described as ‘the era of the oppression remedy’. Complaints about victimization at the hands of majority shareholders abound. Our court systems strive to keep up. The jurisprudence is not free from contradiction.

The threshold question to be answered in an oppression remedy case is whether the party commencing the court action has the standing to do so.

Both the *Canada Business Corporations Act* and the *Ontario Business Corporations Act* establish four categories of complainant:

- (a) security holders (i.e. shareholders);
- (b) directors and officers;
- (c) the Director appointed in accordance with the provisions of the Act; and
- (d) “any other person who, in the discretion of a court, is a proper person to make an application”.

Courts in Ontario and elsewhere in Canada have held that the right to protection under oppression remedy legislation and jurisprudence extends to a diverse group including shareholders, directors and officers, certain creditors, the corporation itself

or an affiliate of that corporation as well as trustees in bankruptcy of either. Employees, who are also shareholders of the corporation, too have the right to claim to have been oppressed, so long as the conduct complained of is directed at the individual, as shareholder and not as employee.

It can be seen that the oppression remedy is a valuable resource when one claims to have been the victim of corporate wrongdoing.

The Face of Oppression

Where the determination has been made that an individual qualifies as a person entitled to an oppression remedy, the nature of the oppression must then be determined. Under both federal and provincial legislation, the court has the power to rectify the conduct complained of. Such conduct falls into three categories: it must be oppressive, it must constitute unfair prejudice to the complainant’s interests or it must unfairly disregard such interests. Oppressive conduct is viewed by the courts as the most serious of the three categories, unfair disregard as the least serious. Oppression and unfairness are inexorably linked. In determining unfairness, the Courts are increasingly looking to the reasonable expectations of the parties. What are reasonable expectations and merit the scrutiny of the court will be determined on a case by case basis.

Common situations which precipitate complaints of oppressive conduct include:

- (a) conduct which is illegal and exposes the corporation to criminal or quasi-criminal prosecution and sanctions;
- (b) the payment of extravagant salaries, bonuses and expenses to directors and officers, (the very conduct which has attracted so much public attention in Enron and Hollinger); and
- (c) the misappropriation or dissipation of substantial corporate assets.

In general, any conduct on the part of the corporation’s officers and directors which subordinates the interests of the corporation to those of the officers and directors themselves, is fertile ground for an oppression claim.

The basis of an oppression claim may start with little more than an instinct that there is something rotten in the state of the corporation. That instinct should not be ignored. Legal advice should be sought and pointed inquiries made. The nature of the corporation’s response to these inquiries should enable the individual to determine whether the conduct of the corporation’s officers and directors is oppressive and subject to the scrutiny of the court. In such event, legal counsel should be instructed to bring an oppression remedy claim before the court without delay.

This is the first of a two-part series relating to oppression remedies in Ontario and in Canada. Part 2 of this article will appear in the April edition of this Newsletter.

FDH News

We are pleased to welcome **Lori K. Brown** to the firm. Based out of our Oakville office, Lori practices all aspects of Estates Planning including Wills, Trusts, Powers of Attorney and Estate Administration.

Cam Neil is now General Counsel for the Bronte Butterfly Foundation, a charitable foundation dedicated to raising funds for the development of the Bronte Butterfly Park and Winter Skateway, to be located in Oakville's Bronte Harbour.

Brian Heagle, Fulvio Delibato, Ron Weston and **Tibor Sarai** attended the 7th Annual Burlington Mayor's Gala on Saturday, October 30th in support of the Burlington Community Foundation. \$50,000 from the proceeds of this event will be directed to Performing Arts Burlington, of which Brian Heagle is a director.

Debi Sutin and **Dan Caldarone** will be presenting a seminar on "How to Franchise Your Business" at the Canadian Franchise Association's Tradeshow in February 2005.

Brian Heagle was re-elected a director and officer of Performing Arts Burlington.

Pam Teckoe attended the Burlington Chamber of Commerce 5th Annual Small Business Christmas Party, of which our firm was a Bronze Sponsor. Pam is also a member of the 2005 Chamber of Commerce Christmas Party Committee.



*Wishing you all the
Best for the
New Year!*

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