



## Congratulations to Brian Heagle – Burlington’s Citizen of the Year



*From left to right: Mayor Cam Jackson, Fulvio Delibato, Brian Heagle, Regional Chair Gary Carr & James Tuck at the 2009 Civic Recognition Awards ceremony on May 20, 2010. Brian was honoured by the City of Burlington for his devoted and energetic volunteer service to the community.*

*James Tuck (Past President) and wife, Susan, enjoying Burlington’s Sound of Music Festival.*

*Feltmate Delibato Heagle was a lead sponsor for the 13th consecutive year!*



### August 2010

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](http://www.fdhlawyers.com)

### In This Issue...

- Workplace Violence & Harassment - New Rules
- Big News for Small Claims - Raising the Stakes
- FDH News
- InProfile - Forming Technologies Inc.



Feltmate Delibato Heagle

L A W Y E R S

## Workplace Violence & Harassment

### The New Rules

by Paul Lewis



Bill 168 took effect June 15, 2010 and amends the **Occupational Health & Safety Act** in Ontario.

It imposes new, specific obligations on employers with respect to workplace harassment and violence.

Bill 168 defines “workplace harassment” as **“a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”**. “Workplace Violence” refers to “the exercise of physical force by a person against a worker in a workplace that causes, or could cause, physical injury to the worker; and/or an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.” “Workplace Violence” also means a statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker.

#### Employer’s Obligation

Ontario employers with more than five (5) employees are now required to prepare and implement policies with respect to workplace harassment and violence.

These policies are required to be posted in conspicuous locations at the workplace and must be reviewed by the employer as often as is necessary, but at least annually. The employer’s obligation to develop a workplace policy must be supplemented by the development and maintenance of a program to implement harassment and workplace violence policies.

An employer is required to ensure that it has procedures in place for the purpose of controlling risks identified by assessments, summoning immediate assistance, reporting incidents, and investigating and dealing with incidents or complaints that arise. This imposes the obligation that an employer conduct violence assessments as often as is necessary to ensure that its workers are adequately protected. The results arising from each assessment carried out by an employer are required to be reported to the company’s joint health and safety committee or the company’s employees.

#### Employee’s Right to Refuse Work

Pursuant to Bill 168, an employee will have the right to refuse work if workplace violence is likely to endanger them. In the event such a situation arises, the employer is under a positive obligation to investigate work refusals.

If the employer carries out a workplace investigation, and workplace violence continues to endanger a worker who has refused to work, the worker may continue to refuse to work.

Bill 168 also imposes an obligation on the part of the employer to contact the Ministry of Labour for the purpose of arranging for a workplace refusal to be investigated. An inspector will be appointed by the Ministry of Labour for the purpose of determining whether an employee or another person is likely to be endangered in the workplace. Pending an investigation, an employee is required to remain in a safe place close to his or her work station or may be assigned to a reasonable alternative workstation.

#### Failure to Comply

Employers who fail to comply with their obligations arising under Bill 168 to protect employees against violence and harassment in the workplace may be subject to sanction.

Any individual that contravenes Bill 168 may face a penalty of a fine of **up to \$25,000.00 and/or up to 12 months imprisonment**. Any corporation that contravenes Bill 168 will be subject to a fine of **up to \$500,000.00**.

In light of the severity of these penalties, it is imperative that every employer in Ontario with the obligation to comply with Bill 168 ensures that it develops a formal written policy to address and deal with workplace violence and harassment.

Such a policy would include:

- Training employees on such policies
- Creating policies that address workplace violence and harassment
- Undertaking regular risk assessments to determine the likelihood of workplace violence or harassment
- Providing avenues through which employees may report incidents or risk of workplace violence or harassment
- Developing procedures capable of investigating incidents as they arise
- Disciplining employees for failure to follow policies designed to deal with workplace harassment and violence
- Ensuring that adequate security measures are implemented at the workplace for the purpose of protecting employees from members of the public
- Maintaining detailed records of any incident of workplace violence or harassment

Bill 168 broadens and extends the scope of harassment beyond its prohibition under the Ontario Human Rights Code. Is your business complying?

## Big News for Small Claims

### Raising the Stakes

By David Boxen



The Small Claims Court exists in Ontario as an avenue to increase access to justice and it is meant to be an easier, less expensive way to resolve disputes than in the higher courts.

Did you know that nearly half of all civil actions commenced in 2007-2008 (for which the most recent figures are available) were filed in Small

Claims Court?

In June 2006, the Ontario government asked former Associate Chief Justice of Ontario, the Honourable Coulter Osborne, to recommend improvements to the civil justice system to make it more accessible and affordable. As a result of Mr. Osborne's report in 2007, the **Rules of the Small Claims Court in Ontario** underwent several important changes, effective January 1, 2010.

The most significant alteration for anyone contemplating starting a lawsuit, or anyone who is forced to defend themselves against a claim, is that the **monetary jurisdiction of the Small Claims Court rose from \$10,000 to \$25,000, exclusive of interest and costs.**

#### Self-Representation

Intimately connected with making litigation less expensive, Small Claims Court procedures are meant to make it easier for litigants to represent themselves, decreasing the necessity for representation by lawyers. Paralegals also have the ability to represent clients.

Some people who choose to represent themselves do so because they want to retain control of their case, or perhaps because they do not hold feelings of affection toward lawyers. But the predominate reason for proceeding without a lawyer is lack of financial resources.

Currently, the vast majority of plaintiffs and defendants are self-represented. Even bulk users of the Small Claims Court system, such as collection agencies, tend to be represented by paralegals rather than lawyers.

Now that the stakes are higher, will there be a resultant increase in the proportion of litigants who choose to be represented by lawyers?

In the past, when faced with potential legal fees of a few thousand dollars, and a maximum damage award of \$10,000, a defendant might have chosen to forgo representation or hire a more inexpensive paralegal. Now that the ratio has drastically decreased between the cost of legal representation and the prospective damages awarded, it makes more sense to get the best legal advice and representation possible.

#### Taking the Strain

The Osborne Report predicts that with the monetary increase, there will be a substantial increase in the number of filings in the Small Claims Court.

Further, many cases filed in Small Claims Court have been filed on the basis of waiving any amounts over and above the jurisdictional limits, so it is actually difficult to estimate how many more cases this increase will bring.

Some are skeptical about the Small Claims Courts' ability to handle the anticipated increased case load due to a chronic shortage of full-time judges, support staff and facilities.

In lieu of full-time judges, the vast majority of small claims in Ontario are heard by about 400 lawyers sitting as deputy judges. In contrast, all other provinces' small claims courts are presided over by full-time judges. Some concern has also been voiced as to whether the court's contingent of deputy judges has adequate judicial expertise and training to address the increased complexity of the higher-value cases now.

Due to the impending strain on the court system, only time will tell whether the changes to the Small Claims Court will indeed serve the purpose of increasing access to justice for all Ontarians.

### From the Editor's Desk...

By Brian Heagle



#### Hall of Art

Did you know that in January 2003, Feltmate Delibato Heagle LLP opened in its Burlington office a permanent art display known as "The Hall of Art" in support of the Burlington Fine Arts Association and emerging local artists? We invite you to enjoy this experience during our regular business hours.



**FDH News**



Feltmate Delibato Heagle is pleased to welcome **David Rickards** to our corporate/commercial team.



**David Boxen** joined FDH as an articling student in March, 2010.

- **Feltmate Delibato Heagle** in September 2010 is once again a **Platinum sponsor** of the 9th Annual Brady Financial/Pioneer Petroleum's Golf Classic. The tournament will have raised in excess of \$400,000 in support of the Strong Kids program for the YMCA of Hamilton/Burlington/Brantford.
- **Feltmate Delibato Heagle** was a **Silver sponsor** of the Entrepreneur Hall of Fame event in June 2010, presented by the Burlington Economic Development Corporation, for which **Ron Weston** is a director.
- **Feltmate Delibato Heagle** was a proud **Ruby sponsor** of the Joseph Brant Memorial Hospital's Crystal Ball. The event raised over \$545,000 towards improvement of the Hospital's Surgical Unit.

**Brian Heagle - Candidate Ward 4**

Brian Heagle announced in June 2010 that he will be a candidate for Burlington City Council (Ward 4). Please visit [www.voteheagle.ca](http://www.voteheagle.ca).

The municipal election is October 25, 2010.



*Cam Neil, Brian Heagle, Tibor Sarai & their spouses attend the BEDC's Signature event honoring Burlington's 2010 Entrepreneur of the Year, Murray Hogarth.*

**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, Brian Heagle at [bheagle@fdhlawyers.com](mailto:bheagle@fdhlawyers.com).

**BURLINGTON OFFICE**

**Miles Feltmate** - Managing Partner  
Corporate/Commercial, Franchise  
Direct Line: 905-631-3653  
E-mail: [mfeltmate@fdhlawyers.com](mailto:mfeltmate@fdhlawyers.com)

**Fulvio J. Delibato** - Real Estate, Wills, Family Law  
Direct Line: 905-631-3644  
E-mail: [fdelibato@fdhlawyers.com](mailto:fdelibato@fdhlawyers.com)

**Ronald Weston** - Corporate/Commercial, Real Estate  
Direct Line: 905-631-3656  
E-mail: [rweston@fdhlawyers.com](mailto:rweston@fdhlawyers.com)

**Brian Heagle** - Corporate/Commercial, Franchise  
Direct Line: 905-631-3642  
E-mail: [bheagle@fdhlawyers.com](mailto:bheagle@fdhlawyers.com)

**Paul Lewis** - Litigation  
Direct Line: 905-631-3650  
E-mail: [plewis@fdhlawyers.com](mailto:plewis@fdhlawyers.com)

**James Tuck** - Corporate/Commercial, Litigation, Real Estate  
Direct Line: 905-631-3646  
E-mail: [jtuck@fdhlawyers.com](mailto:jtuck@fdhlawyers.com)

**Christopher Neufeld** - Corporate/Commercial, Finance and Transportation  
Direct Line: 905-631-3662  
E-mail: [cneufeld@fdhlawyers.com](mailto:cneufeld@fdhlawyers.com)

**Paul Lawson** - Corporate/Commercial, Real Estate  
Direct Line: 905-631-3663  
E-mail: [plawson@fdhlawyers.com](mailto:plawson@fdhlawyers.com)

**Verena Fraser** - Family Law  
Direct Line: 905-631-3643  
E-mail: [vfraser@fdhlawyers.com](mailto:vfraser@fdhlawyers.com)

**David Rickards** - Corporate/Commercial, Real Estate  
Direct Line: 905-631-3645  
E-mail: [drickards@fdhlawyers.com](mailto:drickards@fdhlawyers.com)

**OAKVILLE OFFICE**

**Tibor Sarai** - Litigation  
Direct Line: 905-287-2205  
E-mail: [tsarai@fdhlawyers.com](mailto:tsarai@fdhlawyers.com)

**Cam Neil** - Corporate/Commercial, Litigation  
Direct Line: 905-287-2200  
E-mail: [cneil@fdhlawyers.com](mailto:cneil@fdhlawyers.com)

**Lori K. Brown** - Wills and Estate Planning  
Direct Line: 905-287-2206  
E-mail: [lbrown@fdhlawyers.com](mailto:lbrown@fdhlawyers.com)

**Kimberley J. Wolfe** - Litigation  
Direct Line: 905-287-2207  
E-mail: [kwolfe@fdhlawyers.com](mailto:kwolfe@fdhlawyers.com)

**COUNSEL**

**Peter Welsh** - Corporate/Commercial  
Telephone: 905-337-3121  
E-mail: [peter@welshlaw.ca](mailto:peter@welshlaw.ca)

**Pam Teckoe** - Director Of Administration  
Direct Line: 905-631-3654

**If you would prefer to receive The Fine Print in electronic format, please contact Pam Teckoe at [pteckoe@fdhlawyers.com](mailto:pteckoe@fdhlawyers.com)**