



THE FINE PRINT

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On May 6, 2006, an energetic team from Feltmate Delibato Heagle took part in the Transitions for Youth Spin to Win Fundraiser at the Goodlife Fitness Club in Burlington. The team of 7 cyclists (pictured below) Paul Lawson, Debi Sutin, Katie Teckoe, Pam Teckoe, Kathy Hall, Chris Neufeld and Brian Heagle raised \$700 to support Transitions for Youth which provides support to at-risk children, youth and families in Burlington, Oakville, Milton and Halton Hills.



Feltmate Delibato Heagle

L A W Y E R S

Lawyer Profile - James Tuck



James Tuck was called to the Bar of Ontario in 1996 and has been with the firm since March, 2002. James practices corporate/commercial, real estate law and civil litigation and has a special interest in information technology enterprises.

As a lifelong resident of Burlington, James has been actively involved in the community through his volunteer work with a number of organizations including the Sound of Music Festival where he has been a director and the Festival's legal counsel for several years.

New Changes for the Real Estate Industry

By James Tuck

The rules regulating the real estate sales industry in Ontario have been significantly revamped with the introduction of the new *Real Estate and Business Brokers Act* (REBBA 2002) which came into effect on March 31, 2006. Although the real estate profession in Ontario has been regulated in some form for at least 75 years, REBBA 2002 is primarily designed to enhance consumer protection through additional regulation.

Among the important changes affecting real estate brokerages, the rules governing ownership have become much more flexible. Under the old rules, fifty-one percent of a brokerage had to be owned by a registered real estate broker. Under REBBA 2002, a brokerage can be owned 100% by anyone. That is, there is no longer the requirement that a brokerage be owned by a real estate broker. In addition, the previous restriction limiting salespersons to holding no more than 10% of the shares of a brokerage has been entirely eliminated. Brokerages must now designate a "broker of record", being the individual registered broker responsible for compliance with REBBA 2002.

REBBA 2002 also introduces a new Code of Ethics. The code sets out greater obligations on real estate agents by imposing minimum standards for agents to follow for the purpose of protecting the public. The code further provides that an agent can now commit an offence under the Act by giving false information (such as not disclosing a recent property "flip") or counselling others (buyers or sellers) to furnish false or deceptive information (such as a mortgage application which inflates the true purchase price of a property).

The requirements for disclosure in Seller Property Information Statements have also been broadened. These statements, which are typically completed by a seller in consultation with its agent at the time of listing a property for sale, contain a standardized list of questions designed to reveal any defects or problems that the seller may be aware of relating to the condition of the property or the seller's title to it. The new Code makes clear that, in situations where the seller has filled out a Property Information Statement, agents are required to disclose the existence of the statement to potential buyers and to provide copies upon request.

A new complaints process for the public has been established and the Registrar of the Real Estate Council of Ontario (RECO) has been granted new powers in professional discipline proceedings. Prior to March 31, 2006, a registered agent could continue to work even though disciplinary proceedings were underway against the agent. Under REBBA 2002, the Registrar has the power to immediately suspend an agent, while the complaint and appeal process is underway, if it is deemed in the public interest to do so.

More stringent regulations have also been introduced for the handling of a purchaser's deposits. The objective of these changes is to ensure that matters relating to trust funds and interest bearing accounts are as transparent as possible. Brokers now have a duty to disclose, in writing, whether the deposit has been invested in an interest bearing account, the rate of interest earned on the deposit and the amount to receive. If the customer and the broker are unable to agree, all interest earned must be paid to the customer.

The rules governing the representation of multiple parties have also been clarified and enhanced. Under REBBA 2002, real estate agents are required to make certain disclosures to help ensure that buyers and sellers have a clear understanding of the services that will be provided to them by their agent. Prior to entering into any agreement, agents are required to inform buyers and sellers about the possibility of multiple representation or "dual agency" and the particular services that will be provided to each. It must also be clear that the representation of both buyer and seller cannot occur unless all parties consent in writing. Agents must describe to potential clients how the services differ in each situation including, most importantly, the agent's obligation to disclose information within its knowledge to the buyer and the seller in each particular circumstance. Each of these disclosures must be made at the earliest opportunity and, in every case, before an Offer to Purchase is made.

In summary, REBBA 2002 attempts to both improve protection of the public while continuing to build on and enhance the professionalism of the real estate sales industry. As with any new regulatory regime, REBBA 2002 is certain to bring with it significant changes and a period of adjustment as both long-standing and more recently introduced business practices are re-examined and adjusted to comply with the new environment.

Third Party Logistics: Getting the Relationship Done Right

By Christopher R. Neufeld

With the continued increase in the outsourcing of the supply chain, reliance upon third parties to provide logistics also continues to increase. Logistics, the management of business operations, such as the acquisition, storage, transportation and delivery of goods along the supply chain, lies at the core of all commerce and trade. The demand for multiple carriers servicing distant geographic regions has, in turn, increased exposure to business failure in the supply chain through increased potential liability. Limiting exposure to unnecessary liability is a concern for all participants – transport buyers (shippers), intermediaries (third party logistics providers or 3PLs) and carriers. The role and responsibility of each of these parties needs to be established at the outset of the relationship.

Even though 3PL is a relatively new term, there is nothing new about contractual relationships with third-party providers of transportation and logistics services. Canadian courts have long dealt with the contentious issues that arise from operating a multi-participant supply chain. The specific facts underlying each relationship are critical to the determination of liability, necessitating a thoughtful approach to establishing and maintaining one's business relationship with logistics partners.

Without a well-defined relationship, even the most well-intentioned logistics partners are exposed to unnecessary liability. These issues may be of little or no concern when one is first establishing the relationship. However, when problems arise that are beyond your control (particularly if they are internal to your logistics partners), the repercussions can be quite severe. Recent court decisions have established that a party will not necessarily be protected notwithstanding the fact that it has done nothing wrong.

All too often, problems arise in the operation of a multi-party supply chain where the failure of one logistics partner has unwelcome repercussions for its fellow logistics partners, often far in excess of what they would reasonably have anticipated. The underlying theme throughout these cases is the failure of the parties to establish at the outset a clear and legally-binding relationship. In the absence of certainty, the parties are left to the discretion of relatively inconsequential factors being the determining factors in the court's decision.

In *Mediterranean Shipping v. BPB Westroc*, the shipper found itself having to pay twice for its shipments – once to the insolvent intermediary and a second time to the carrier. Conversely, in *Earl Paddock Transportation v. Accuride Canada*, the shipper was not found liable to the carrier where the intermediary was insolvent and had failed to remit payment on the carrier's invoices. With the slightest variation in the facts, liability can swing from one of the logistics parties to another.

Permitting chance and circumstance to dictate resolution of your legal problems is not a sensible approach to conducting business. It is wise not to emulate the mistakes of your competitors when establishing your logistics operations by failing to take the proper precautions to protect yourself. The Courts have not hesitated in admonishing parties who have taken inadequate legal precautions, as no party to a multi-party logistics arrangement can expect any sympathy from the Courts in the absence of a clear and legally-binding relationship with their supply chain partners.

Christopher R. Neufeld is admitted to the New York State Bar, and will be called to the Bar of Ontario in the summer of 2006.

FDH News & Legal Tidbits

- **Debi Sutin** attended the **15th Annual Canadian Franchise Association Convention**, which was held in Niagara Falls, Ontario from May 14 –16, 2006.
- We are pleased to announce that **Christopher Neufeld** will be returning to the firm as an associate following his call to the Ontario Bar in July.
- **Ron Weston** attended the 2-day **Joseph Brant Invitational Golf Tournament** at Taboo Resort on May 27 and May 28th. The event raised more than \$130,000 to be used to purchase diagnostic equipment.



Brian and Agnes Heagle, Fulvio and Silvana Delibato, and Tibor Sarai and Anita Darrell attended the Joseph Brant Memorial Hospital's 6th Annual Crystal Ball.



Debi Sutin and Ron Weston (standing) attended the annual Canadian Franchise Association golf tournament on June 5th where they were paired with Jeff Wright and Daniel Chailler of Statopex Field Marketing

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