



THE FINE PRINT



Pictured from left to right are organizing committee members Don Patterson of Stagevision Rentals Inc., Cheryl Stephenson of FibreWired (Burlington Hydro Communications), Pam Teckoe and Keith Hoey, President of the Burlington Chamber of Commerce

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

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JANUARY 2006

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Feltmate Delibato Heagle

L A W Y E R S

Lawyer Profile - Cameron D. Neil



Cam joined Feltmate Delibato Heagle LLP as its first articling student in 2003 and over the past two years has been diligently pursuing his goal of becoming a major contributor to the firm's civil litigation team.

As part of his developing practice, Cam is also often called upon to negotiate and draft a variety of business agreements, which benefit from his litigation training.

In addition to the Ontario Superior and Provincial Courts of Justice, Cam has appeared before a number of public tribunals including the Criminal Injuries Compensation Board and the Ontario Rental Housing Tribunal. Cam is currently assisting with the Government of Ontario's inquiry into the events surrounding the 1995 shooting death of Dudley George at Ipperwash Provincial Park.

The New Consumer Protection Act, 2002 (Part 2)

By Cameron D. Neil

This is the second of a two-part series on the new Consumer Protection Act, 2002 (the "Act") which came into force on July 30, 2005. Part 1 of this article appeared in the October 2005 issue of The Fine Print.

In Part 1 of this article, we discussed the requirements under the Act concerning Consumer Rights and Remedies, Unfair Practices and Specific Consumer Agreements. In this Part of the article, we discuss the salient provisions of Parts VI – VII of the Act dealing with Repairs, Credit Agreements and Leases.

Repairs

Part VI of the Act deals with repairs to motor vehicles and other goods. It is important to note that "goods" under the Act is defined as "any type of property", which includes real property. One of the protections afforded consumers under this part of the Act is that no repairer is entitled to charge a consumer an amount in excess of 10% of the amount of its estimate. The Act requires that a repairer provide a consumer with an estimate (or risk not getting paid) unless the estimate is waived by the customer. A fee cannot be charged for an estimate unless the consumer is first informed of the amount of the fee. Furthermore, an estimate fee cannot be charged if the repair work is later authorized and carried out.

The corresponding regulations to this Part of the Act set out the prescribed requirements for, among other things,

estimates, authorizations and invoicing. In view of these requirements, it would be prudent for anyone engaged in the repair of property, of any kind, to ensure that its form of agreement or invoice meets these requirements. If the agreements do not comply, there is a risk that a consumer, relying upon its rights under the Act, would not be required to pay for the repairs.

Another significant provision requires that vehicle repairers are deemed to warrant both all new or reconditioned parts installed, and the labour required to install them, for a minimum period of 90 days or 5,000 kilometres or any greater minimum period that may be prescribed by the Regulations.

Credit Agreements

Part VII of the Act sets out the disclosure requirements under Credit Agreements. Failure by a creditor to include the prescribed disclosure can result in the consumer not being liable to the creditor for the cost of credit, such as interest and prepayment charges. Initial disclosure statements for fixed credit must now include the following information:

- when advances are to be made;
- the right of the consumer to terminate an optional service and receive a proportionate refund;
- details of grace periods;
- the total of all payments and the timing and amount of each payment

- when interest begins to accrue and the circumstances under which it is compounded;
- details of any payment deferrals;
- prepayment rights, charges, and penalties that apply to the credit agreement

Of significance, a consumer now has a right under the Act to prepay a loan, either the full balance at any time or any portion of the balance on a scheduled payment date, without payment of a prepayment charge.

Leasing

Part VIII of the Act deals with leases, in excess of four months, those with indefinite terms and those with residual obligations. Only goods leased in respect of a residential tenancy are excluded. The Act prescribes the information that must be disclosed to a consumer, in a prescribed form, prior to the parties entering into a leasing contract.

Conclusion

If they have not done so already, Ontario businesses providing goods or services to consumers, whether those consumers are located in Ontario or not, and businesses located outside of Ontario providing goods and services to consumers in Ontario, are required to modify the forms of their consumer agreements as well as to alter some of their business practices in order to comply with the requirements of the Act.

Planning For The Sale of a Family Business

By Ron Weston

This is the second of a two-part series on matters to consider when preparing a family business for sale. Part 1 of this article discussed the Capital Gains Exemption and techniques to enhance this exemption in the October 2005 issue of The Fine Print.

3. Financial Reporting – Acquisition-minded companies become sophisticated purchasers. They often engage in extensive due diligence inquiries prior to consummating a share transaction, which always includes a review of a company's annual financial statements for several prior fiscal years. Family-owned businesses quite often engage their accountants to prepare "Notice to Reader" or "Review Engagement" financial statement reports. Neither of these reports requires the accountants to make diligent inquiries to ensure that management is properly and fairly reporting all material financial information. A sophisticated purchaser, when encountering "Notice to Reader" or "Review Engagement" reports, will exercise extreme caution in negotiating the terms of a purchase of a business. However, if a company, in anticipation of a sale, has its financial statements audited, the purchaser will place more reliance on the fact that the statements were subject to an audit and rely less on the vendor's representations and warranties in the purchase agreement. If a company begins to have its annual statements audited, years in advance of a sale, the additional expense of this higher level of financial reporting may ultimately be insignificant to the additional price obtained or the reduced exposure of the seller for its representations and warranties.

4. Personal Guarantees and Indemnities

- It is not unusual for certain creditors of a business (e.g. banks and landlords) to require personal guarantees of the owners of a family business as a condition to providing

financing to the business. The "need" for the personal covenant as a measure of security tends to lessen over years of successful operation of the business. However, since personal guarantees and indemnities can only be released by the creditors who hold them, neither the purchaser nor vendor of a family business can eliminate the vendor's exposure under the contract which has been guaranteed. Furthermore, creditors are typically not inclined to give up their security, resulting in a sale transaction being completed with the vendor remaining at personal risk.

During the course of the operation of a family business, the owner subject to the guarantee should be mindful of the benefit of being "removed from the covenant" whenever possible (typically at times of renewal of the underlying obligation) and should attempt to negotiate for the release of any such continuing personal guarantee obligations.

5. Employees – Depending upon the nature of the business and its reliance on a specialized workforce, a business owner has the opportunity to make its business more attractive to a purchaser or to reduce its financial obligation to pay termination pay to employees by giving "working notice". Every employee must be given a reasonable period of notice by an employer prior to his or her termination (except of course if there is a written agreement with an express clause to the contrary). The other, more expensive option, is a payout of an amount equal to the pay an employee would receive over a reasonable notice period. A vendor should exercise caution, however, in providing working notice to key employees who may be an attractive component of the business in the eyes of the purchaser, or necessary employees who could seek alternate

employment after receiving notice.

6. Family Name – The corporate name of a business often involves the surname of the family that owns it. Some families wish to ensure that the family name is no longer associated with the business after its sale. Most businesses can withstand changes to its name with no adverse effect on the profitability or value of the company. A cautious purchaser, however, may be concerned that a post-closing obligation to change the name of the business could adversely affect the company's relationship with its customers which could reduce the goodwill portion of the purchase price that a purchaser would be willing to pay. If a business owner has a plan towards a future sale of the business, it may wish to change the name of the business well before it markets the business for sale with the post-name change financial reports substantiating that the change of name has not resulted in a loss of goodwill.

Business owners should consult with both their financial and legal advisors to ensure that matters relevant to the sale of a family-owned business are addressed.

FDH News & Legal Tidbits

- **Lori Brown** has joined the SickKids Legacy Advisors Program, a gift-planning team which works closely with the Hospital for Sick Children and prospective donors to the SickKids Foundation
- On November 11, 2005, **Brian Heagle, James Tuck and Lori Brown** attended the 5th annual dinner, concert and silent auction in support of Bereaved Families of Ontario, Hamilton/Burlington. Feltmate Delibato Heagle was a Gold Sponsor of this event, held at the Burlington Convention Centre.
- On November 24, 2005, **Lori Brown, Debi Sutin and Jenee Weessies** attended the fourth annual "Oakville Toy Tea" hosted by Oakville accounting firm Henderson Partners LLP. Guests were asked to bring an unwrapped toy to brighten the holidays for underprivileged children in the Oakville community. Each year more than 1000 toys have been donated as a result of this very worthwhile toy drive.
- **Feltmate Delibato Heagle** was a Gold Sponsor of the Burlington Chamber of Commerce Small Business Christmas Party held on Nov 25, 2005. The event provided a fun filled evening for guests while collecting unwrapped gifts for The Halton Women's Place and The Big Brothers Big Sisters of Canada. **Pam Teckoe** was on the organizing committee for this event.
- **Peter Welsh** is now counsel for Oakville Music & Art Shared Space Inc., an Oakville based not-for-profit organization which provides facilities for artists to learn, practice and exhibit their works.



*Jenee Weessies, Debi Sutin, Christie Henderson and Lori Brown
at Henderson Partner's Annual Toy Tea*

If you would prefer to receive The Fine Print in electronic format,
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