

AFTER HOURS

# Law Summit takes a look at the family

By Mike Beggs

Family businesses simply aren't the same as other businesses.

That was the point driven home by Murray Gottheil, a partner in the local Pallett Valo law firm, and one of 11 speakers presented at the second annual Business Law Summit on September 20 at the Novotel Hotel.

His entertaining presentation was entitled, 'You Always Hurt The One You Love: Avoiding And Resolving Disputes In Family-Owned Businesses'.

Other topics covered in this informative half-day event included: 'Developing Canada's 21st Century City'; 'New And Pertinent Environmental Law Issues'; 'Green's View On Green Buildings: A Not So Legal Look At The Green Building Trend'; 'Clients' Thoughts on Litigation - From the Perspective Of An In-House Lawyer'; 'The Long and Winding E-Mail: The Potential Pitfalls Of E-Mail When Litigation Looms'; 'Recent Changes To North American Patent Law That Impact Your Business'; 'Dealing With The Receivers/Trustees In Bankruptcy Of Your Customers'; 'Canadian Business Expansion To The United States - Immigration Considerations'; 'Managing Human Resource Risks'; and 'Holdback Obligations Under The Construction Lien Act'.

About 100 guests turned out for the Summit, which emcee Ray Mikkola observes, "offers a very high level program, without having to go to Toronto."

"It was a good mixture of existing clients, and clients who came to see what exactly is the Business Law Summit," says the Pallett Valo partner, and condo law specialist.

"I think the real benefit people get from attending, they get to hear about current news. And they get to meet people who are likeminded - vendors, CAs, owner/operators, tenants, lenders, real estate agents - lots of people involved in business. They had the opportunity to network with others. There's a lot of business cards being handed out."

The Summit is structured to "keep the program moving along", with each speaker granted just 15 minutes.

"It's one morning of your year, and of significant importance to your business," he continues. "And if one or two topics are particularly applicable to your business, you can ask questions afterward and get some direction on what's keeping you up at night."

It seems plenty of people are kept up at night, where family businesses are concerned.

Gottheil explains that the emotional relationships involved create different dynamics - requiring, in turn, a different approach to resolving disputes.

Within the family business you may find: remuneration not commensurate with contribution; positions not always held on merit; tolerance for incompatibility; deepseated resentments not connected to the business; spouses who have their own

agendas; shareholders afraid to sell; and simmering disputes which boil over when Dad or Mom dies.

"The stories that a lawyer has to tell about family businesses are often the story of family dynamics which have created serious problems in the business," he comments.

"As Leo Tolstoy said, 'every unhappy family is unhappy in its own way.'"

He cites the example of the son who was given shares in the family business at age 20, developed a drug addiction at 30, and then pressured his father to let him sell his shares - to finance his habit.

"The variations of issues are endless, and the only constant is that they usually cannot be resolved solely by the application of logic," he muses. "These types of issues have to be resolved by changing the attitudes of the participants in the business."

The battle ground is also different, because, "when the shareholders are related,

there are often no written agreements in place at all."

"And there may be documents, and legal obligations (such as powers of attorney, and wills) which you would not typically find among unrelated business owners, which were granted for estate planning purposes but which may impact the legal counsel of the business," he adds.

According to Gottheil, in most disputes shareholders are motivated by one of three factors - ego, money, or a desire to be treated fairly.

"In family-owned business situations, determining the motivation of the combatants is often more difficult," he says. "And there's less willingness to go legal."

"It would seem, on anecdotal evidence, that in family business disputes the combatants might be content to snipe at each other and make each other's lives miserable for extended periods of time, rather than bring the matter into a legal setting."

While lawyers generally resolve such disputes through consensus building, negotiation, mediation, arbitration or litigation, in this case they may have to try other avenues.

"The nice thing about a society that is built upon greed is that the actions of the participants are predictable," he adds. "In any dispute, you have a chance of finding a resolution by identifying the right amount of money to pay someone, so that everyone will be equally unhappy. We call that a 'win-win' solution. The problem with resolving disputes in family businesses is that they are not all about money, which makes disputes more difficult to resolve."

A cross-section of attendees at the Business Law Summit ranged from Freedom 55 Financial to the Peel District School Board; and from Century 21 real estate to BMO.

Pallett Valo LLP was lead sponsor. Some of the other sponsors included the City of Mississauga, Parmalat Canada, Hodgson Russ LLP, Ridout & Maybee LLP, and Willms & Shier environmental attorneys.

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From left to right, Naoki Nagoka with Mario Toyotoshi and his father Naoyuki Toyotoshi of the Toyotoshi Group Canada break ground on the 48,000 sq. ft. building that will house Meadowvale Toyota when it opens in 2008 at Argentia and Winston Churchill Blvd. The group also owns Dixie Toyota and Ideal Honda. Photo Peter McCusker

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