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Paralegal licensing is good news

For the first time in Ontario, paralegals are about to become a regulated profession

For the first time in Ontario history, independent paralegals will become a regulated profession when new legislation comes into effect on May 1.

On that day, the Law Society of Upper Canada becomes the regulator of those paralegals who provide a limited range of legal services directly to the public and who do not work under the supervision of a lawyer or other business employer.

Regulated paralegals will continue to be able to practise in cases before the Small Claims Court, provincial boards and agencies (such as the new Landlord and Tenant Board), and provincial offences before the Ontario Court of Justice.

As at present, they will not be able to practise in areas such as real estate law and cases before the Superior Court of Justice.

The new legislation will lead to the creation of standards of conduct and other regulatory requirements, providing better protection and recourse for consumers of all legal services.

Over the next six months, the Law Society will issue licences to paralegals who qualify for registration under the new scheme. Once the licensing regime is fully operational, the public will have access to paralegals who are regulated, educated, licensed and insured.

In recent years, the need for regulating paralegals has been the subject of considerable comment by Ontario judges and in two Ontario government reports. The most recent comment occurred in a Superior Court decision of Justice Deena Baltman last October. It was published last month in the Ontario Reports.

In December 2002, Pamela Elliot received an eviction notice from her landlord claiming rent arrears of \$2,700. Shortly afterward, the Ontario Rental Housing Tribunal issued an eviction order against her.

Elliot contacted Vince Chiarelli, a paralegal, to stop the landlord's eviction. He promised her in writing that for a fee of \$1,200 plus expenses he could file an appeal to Divisional Court and obtain a stay which would "prevent or significantly delay the eviction proceedings."

Chiarelli confirmed his retainer in a letter which said, "leave when you want to, not when they want you to leave." He confirmed Elliot's request for "an injunction to stop this very unfortunate and unjust eviction."

Elliot borrowed money from her mother and paid \$1,790.45 in fees and expenses to Chiarelli in two installments. He spent a total of two hours working on the tenant's court application.

Shortly after Chiarelli filed his application to stay the eviction, the landlord applied to the court to set aside the certificate staying the proceedings. The request was successful and the tenant was evicted on March 20, 2003. She ended up living in her car after she and her children were thrown out of their apartment.

Eventually, Elliot sued Chiarelli in Small Claims Court to recover the money she paid him, based on professional negligence, breach of contract and alleged violations of the Business Practices Act.

When her suit was tossed out in Small Claims Court, Elliot appealed to the Superior Court of Justice, where she succeeded in getting an order against Chiarelli for \$1,790.45 plus interest and costs.

"As a legal service provider," Justice Baltman wrote in her decision, "Mr. Chiarelli had a duty to provide good advice. Instead, Mr. Chiarelli advised Ms. Elliot to pay him nearly \$1,800 so that he could postpone her eviction by what he knew could only be a matter of weeks. That was bad advice.

"A competent legal service provider would have recommended that she use that same money for first and last month's rent in a new apartment."

"It doesn't take a lawyer or even a paralegal to figure out that spending \$1,800 to buy five weeks' worth of time is throwing good money after bad," the judge added. She noted that the flat fee of \$1,200 for two hours' work was "an unconscionable amount of money" for a paralegal to charge.

She also commented that some of the statements in the letter Chiarelli wrote to Elliot to confirm his retainer were "misrepresentations" or "the most blatant falsehood."

Finally, the judge referred to a long-standing gap in the law, "as there is currently no legislation that specifically governs the behaviour of paralegals." She expressed the hope that the then-pending paralegal legislation would close the gap in consumer protection for individuals choosing to use paralegal services for basic legal matters.

Over the next six months, paralegals will apply to the Law Society for licences to provide limited legal services to the public. These will be issued subject to proof of experience, education and good character.

Once the licences are issued, paralegals will be subject to a regulatory scheme that will require minimum standards of conduct, education, and insurance.

Hopefully, in future it will not be necessary for consumers like Pamela Elliot to resort to two court hearings to enforce minimum standards of paralegal conduct.

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