

Paralegal found in contempt of court

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A recent Superior Court ruling has provided a valuable definition of "mediation" while endorsing the growing use of family mediation.

Maureen Boldt, a North Bay paralegal, was blasted by Hennessey, J., for preying on the public by pretending to be a mediator. (Law Society of Upper Canada v. Maureen Boldt et al, (S.C.J. February 28 & March 1 2006.)

Ms. Boldt, who had already been found, twice, to be illegally practising law, was ruled in contempt of court for continuing to violate the terms of an injunction restraining her from practising law. Her penalty has not yet been determined: the Law Society is seeking a jail term.

The Law Society first became concerned about Ms. Boldt around 1993, when it learned that she was providing legal advice, preparing separation agreements and divorces, and preparing wills for people. Ms. Boldt was not trained, licensed nor insured to practice law.

Paralegals are not, and never have been, allowed to offer services in the family law field. Even in seemingly simple cases, there is a high risk of error causing harm to the public if unqualified people are performing such services. This will not change with the pending paralegal regulation by the Law Society; family law will not be one of the areas in which paralegals will be licensed to provide services.

After a failed prosecution in 1995 followed by a new trial, Ms. Boldt pleaded guilty to practising law without a licence. However, within a year the Law Society was back in court: Ms. Boldt had continued to thumb her nose at the law.

In 1999, the Law Society won an injunction against Ms. Boldt.

But it appears that the injunction made little difference to Ms. Boldt's practice, but for one thing: she now claimed she was providing mediation services. Instead of labelling the documents she prepared as "separation agreements", Ms. Boldt called them "Memoranda of Understanding", the name usually given to the end result of the family mediation process.

However, what Ms. Boldt was doing was anything but mediation. In one case, she accepted a client who wanted a final and binding separation agreement. Ms. Boldt met the client, took instructions, and provided legal advice on the separation date, spousal support rights, pension and other property division and waivers, and debts. Ms. Boldt prepared a document that was a separation agreement in every way but name. The

client's husband came to Ms. Boldt's office and signed the document, as did the client. If this sounds like the practice of family law, well, that's because it is.

Ms. Boldt also took advantage of public confusion about what mediators do. As Susan Healey, president of the Ontario Association of Family Mediation (OAFM), noted, family mediators who comply with the OAFM Code of Conduct must not prepare legally binding documents. The end result of a family mediation is a memorandum that records what the parties intend to agree on, for the purpose of obtaining all the advice they may need prior to finalizing an agreement. Mediators must meet with both parties and ensure that there is full financial disclosure. Family mediators are required to recommend that all clients obtain independent legal advice. Ms. Boldt did none of this.

Ironically, when she was served with the contempt motion, Ms. Boldt contacted Ms. Healey, claiming that the Law Society was seeking to regulate mediators. Ms. Boldt suggested that the OAFM might contribute to her legal costs. After reviewing the documents provided by Ms. Boldt, the OAFM Board of Directors immediately revoked her OAFM membership and offered to support the Law Society in its motion.

The case does many things. First, it emphasizes the importance and validity of family mediation.

"The practice of mediation... is a valuable service to the public. Mediation in the family law context is a non-adversarial approach to the resolution of matters arising out of the break up of a marital or domestic relationship. It is a process that suits the circumstances and conditions of many couples that are separating."

Secondly, it provides an answer to those who are concerned that paralegals who call themselves "mediators" will escape the regulatory regime about to be introduced for paralegals in Ontario. The "form" of mediation, Justice Hennessey wrote, "cannot and will not be used as a shield to protect those who are carrying on the unauthorized practice of law".

Thirdly, the decision corrects the common misunderstanding that mediators can be seen as an alternative to lawyers. Legal advice is essential to a sound mediation process.

"It is a well-known fact that low and middle-income persons often find the cost of legal services beyond their means. There are alternatives to the legal process for the resolution of disputes. Mediation is one of these alternatives. However, mediators should not be seen as a low-priced alternative to lawyers."

And finally, the case reminds ADR practitioners who might desire self-regulatory status of their obligation to protect the public. Those who are given an exclusive right to perform specific professional services, noted Justice Hennessey, have a return obligation to govern themselves in the public interest.

Ms. Boldt is appealed the decision. Her appeal was unsuccessful.