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Paralegal ruling will have far-reaching result

Could have chilling effect on non-lawyers involved in real estate services.

The Law Society of Upper Canada has been granted a permanent injunction restraining North Bay paralegal Maureen Boldt from practising law.

The court order was granted earlier this month by Mr. Justice Michael Bolan of the Superior Court of Justice, and prevents Boldt from preparing and drafting separation agreements, petitions for divorce, wills and incorporation documents.

Although the issue of real estate law was not specifically raised in the Boldt case, the decision contains a broad definition of the "practice of law," which could have a chilling effect on non-lawyers who set themselves up to offer real estate conveyancing services and other legal advice to an unsuspecting public.

For the past nine years, Boldt offered paralegal services in North Bay through her business Boldt Paralegal Services.

She advertised in local telephone directories that she offered various paralegal services, including uncontested divorces, simple incorporations and simple wills.

Starting in 1994, she ran into problems with the law society for offering services that could, under law, only be offered to the public by lawyers.

Her position was that all she did was type pages, fill in forms and follow her clients' directions.

Finally, on April 30, 1998, after several years of charges, dismissals, appeals and non-suits, Boldt pleaded guilty and was convicted of one count of acting and practising as a solicitor contrary to the Law Society Act.

On the same day, she signed an agreement admitting she contravened the legislation, and undertook not to commit further breaches of the act.

The latest court action was initiated by the law society after Boldt continued to provide legal services in spite of her undertaking not to do so.

Bolan found that by continuing to perform services involving the preparation of legal documents after 1998, Boldt "created substantial risks to the parties involved and to the community at large."

Former clients of Boldt testified that custody and access issues were left out of divorce petitions, and separation agreements contained seriously inadequate child support provisions.

(It is necessary to disclose that, although I am an elected member of the governing board of the Law Society, I took no part in the prosecution of Boldt and do not sit on the committee that oversees such activities.) In his 10-page ruling, Bolan crafted a judicial definition of practising law that could send a collective shiver down the spine of the independent paralegal community.

A person who acts as a solicitor, the judge wrote, "is one who conducts an action or other legal proceeding on behalf of another, or advises that other person on legal matters, or frames documents intended to have a legal operation, or generally assists that other person in matters affecting his legal position."

Bolan's definition is far broader than the position taken by retired Justice Peter Cory in his report to the Ontario government on the proposed regulation of independent paralegals in Ontario, of which I have written before.

Cory proposed allowing paralegals to practise alone in certain areas of law, including real estate sales. Attorney-General Jim Flaherty has not yet released a public response to the Cory report.

The Boldt decision is directly relevant to those who have, in the past, acted for members of the public on real estate transactions.

In recent years, the law society has secured convictions in Midland, Dryden and Thunder Bay against three non-lawyers who practised real estate law.

Recent attempts to set up real estate "closing centres" in southern Ontario, where people could close transactions without lawyers, have apparently been scrapped by their operators.

Observers cite, as reasons for the closings, the costs and detail work required by the operation, public complaints, and the concerted opposition of the real estate bar, and feedback from focus groups which responded negatively to the concept.

Ajit John, investigative counsel for the Law Society, told me this week that the society recognizes there is a role for paralegals in the provision of legal services in some areas, but real estate is not one of those areas.

The society has submitted to Flaherty a detailed response to the Cory report. The government is now reviewing it and other responses to the report.

John said the law society hopes to work with the government of Ontario to develop comprehensive legislation that guarantees the protection of the public and ensures that paralegals meet defined standards of conduct, training and insurance.

Ten years ago, the government commissioned its first report on paralegals, and then immediately shelved it. The Cory report is badly flawed in many areas, and there is a risk that it could suffer the same fate.

Hopefully Flaherty and the staff of the attorney-general's office will not let that happen, and instead craft an acceptable compromise that will satisfy the needs of the stakeholders and protect the public.