

Liability of Paralegals

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The decision of the Superior Court in *Hamilton v X-Copper* [2005] OJ No 2463 holds a paralegal firm liable for negligence. The firm was holding themselves out as acting on motor vehicle related charges including *Criminal Code* charges. In making the finding, the Court commented adversely on the paralegal firm's practice (not surprising as liability was found). More importantly, the Court made certain findings about the standard of care a paralegal owes. While focussing on the specifics of the case (a court date was missed and the client incarcerated) the general tenor of the decision suggests paralegals are held to much the same standard as lawyers. Whether it is appropriate or not for paralegals to act at all, paralegals in acting to provide legal services (in effect acting as lawyers) will be held to the standards of counsel. Lawyers ought to consider the standard required of paralegals in dealing with persons represented by paralegals; something not uncommon in smaller commercial and litigation matters. Some relevant parts of the case are set out below:

1. X-Copper is a paralegal service firm which provides advice and representation to clients in connection with charges of driving-related offences.

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5. As a result of these events, Mr. Hamilton engaged the assistance of X-Copper to advise and represent him. There is some uncertainty as to exactly when the services of X-Copper were engaged, precisely when and how often the Plaintiff attended at the offices of X-Copper, as well as the exact scope of their retainer.

6. Although X-Copper purports to be in the business of providing professional paralegal services to clients, it has no documents, records or file materials that clearly indicate the dates upon which Mr. Hamilton attended at their offices or that delineate the precise nature and scope of their retainer. As a general observation, X-Copper's record-keeping (at least in Mr. Hamilton's case) is woefully inadequate.

I accept Mr. Hamilton's evidence that he was never informed by X-Copper or anyone else of the trial date. As a result, he did not attend his trial on November 8, 2002. Had X-Copper advised Mr. Hamilton of the trial date, I accept his evidence that he would have taken steps to attend Court either with or without a representative. Mr. Hamilton was tried in absentia, convicted, sentenced to a period of 15 days incarceration and was fined \$5,000.00.

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13. In my opinion, having undertaken to provide legal services and representation to Mr. Hamilton, X-Copper was under an obligation to ensure that Mr. Hamilton was clearly informed of any limits upon its retainer. X-Copper was also obliged to ensure that Mr. Hamilton was made aware of the necessity to appear in Court on November 8, 2002 for trial. Having failed to discharge either obligation, X-Copper breached its duty to Mr. Hamilton and was therefore negligent.

As Mr. Hamilton describes his ordeal, he slept only fitfully during his entire period of imprisonment and was unable to eat the food provided. He was subjected to the indignity of a strip search upon his arrival at the jail and his finger prints were taken.

Reference has been made by counsel to several cases which have resulted in awards of damages to individuals who have sustained periods of false imprisonment. Each of those cases have been decided on their own facts but they do provide some degree of guidance in establishing an appropriate quantum

for damages in the rather unusual circumstances of this particular case (see: Snow v. Brettons Inc., [1987] O.J. No. 1989 (Ont. Prov. Ct.); Thornton v. Hamilton-Wentworth (Regional Municipality of Police Force, [1999] O.J. No. 1250 (Ont. Gen. Div.); Carpenter et al. v. MacDonald et al., [1979] 27 O.R. (2d) 730 (Ont. C.A.)). The common thread running through those decisions is the acceptance of the proposition that to be deprived of one's liberty, even for a short time, is a very serious event.

24. In my view, considering the facts of this case, Mr. Hamilton's description of his experience while in the Don Jail and its impact on him at the time and its continuing effect on him, all of which I accept, I consider that the appropriate and reasonable amount to assess as compensation for his general damages is \$25,000.00.

Although the record-keeping of X-Copper in Mr. Hamilton's case was not of a standard to be expected of an organization purporting to provide the services it does, I agree with its counsel that this action is not the appropriate forum in which to embark upon a sweeping inquiry into X-Copper's general operational standards of practice. I have concluded on the evidence that when the error it made was brought to X-Copper's attention, it made reasonably prompt efforts to secure Mr. Hamilton's release from jail. Although it would have been more appropriate, in my view, for X-Copper to have taken immediate steps to engage legal counsel to bring the bail application, as opposed to employing an inexperienced paralegal employee for that purpose, I nevertheless consider that it made efforts in good faith to assist Mr. Hamilton. I also note the positive results that were ultimately achieved for Mr. Hamilton in connection with both matters which resulted in his ultimate acquittal on all charges against him.

** This article is intended to provide general information and is not specific legal advice.
If you have a legal problem, you should not rely on this article alone but should speak to a lawyer.
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