



Law Society
of Ontario

Barreau
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Best Practices for Paralegals Dealing with Self-Represented Parties

CHAIR

Christina De Palma

De Palma & Associates Legal Services PC

October 20, 2023



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Best Practices for Paralegals Dealing with Self-Represented Parties

CHAIR: **Christina De Palma**, *De Palma & Associates Legal Services PC*

October 20, 2023

9:00 a.m. to 11:00 a.m.

**Total CPD Hours = 1 h + 30 m Substantive + 20 m Professionalism ^P
+ 10 m EDI Professionalism ^e**

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SKU CLE23-01008

Agenda

9:00 a.m. – 9:05 a.m.

Welcome

Christina De Palma, *De Palma & Associates Legal Services PC*

9:05 a.m. – 9:10 a.m.

Paralegal Rules of Conduct to Consider (5 m ^e)

Christina De Palma, *De Palma & Associates Legal Services PC*

9:10 a.m. – 9:30 a.m.

Best Practices before the Small Claims Court (5 m ^e)

Reilly Cservenyi, *Dean Cservenyi LLP*

9:30 a.m. – 9:50 a.m.

Best Practices before the Landlord Tenant Board

Lyndsay Dubois, *J & N Paralegal Services*

9:50 a.m. – 10:00 a.m.	Question and Answer Session
10:00 a.m. – 10:10 a.m.	Break
10:10 a.m. – 10:30 a.m.	How to Take Over a File from a Self-Represented Party (10 m ) Robert Barber, <i>Prevail Paralegal Services Professional Corporation</i>
10:30 a.m. – 10:50 a.m.	Dealing with Self Represented Parties: Other Things to Consider (10 m ) Michael Radan, <i>Municipal Property Assessment Corporation (MPAC)</i>
10:50 a.m. – 11:00 a.m.	Question and Answer Session
11:00 a.m.	Program Ends

Best Practices for Paralegals Dealing with Self-Represented Parties

October 20, 2023

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Michael Radan, *Municipal Property Assessment Corporation (MPAC)*



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TAB 1

Best Practices for Paralegals Dealing with Self-Represented Parties

Paralegal Rules of Conduct – Dealing with Unrepresented Persons

Christina De Palma

De Palma & Associates Legal Services PC

October 20, 2023



Paralegal Rules of Conduct – Dealing with Unrepresented Persons

Rule 4.05

Under this rule a paralegal has very strict limitations on dealing with an unrepresented person on behalf of their client. The paralegal shall:

- Ensure that the unrepresented person has no indication that you, as opposing paralegal, will protect their interests in any manner
- Make it abundantly clear that you, as opposing paralegal, act solely in the interests of your client



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TAB 2

Best Practices for Paralegals Dealing with Self-Represented Parties

Best Practices before the Small Claims Court
Dealing with Self-Represented Parties (PPT)

Reilly Cservenyi
Dean Cservenyi LLP

October 20, 2023



Best Practices before the Small Claims Court

Dealing with Self-Represented Parties

Are Self Represented Litigants Unreasonable?

OF COURSE!

- Personally invested
- Won't understand the rules vs. practice
- Lack of experience



Correspondence

- Confirm *everything* in writing
- Extra information
- Clarity is key

A little extra time and care at the outset can save your client a lot of time and money down the road.



Court Leniency

Deputy Judge Discretion

- “Unless the Court orders otherwise”
- “Special circumstances”
- “Reasonable”



Rule 2:

The Rules of the Small Claims Court

2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute. O. Reg. 258/98, r. 2.01.

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time. O. Reg. 258/98, r. 2.02.



Dealing with your client

- How might your advice to your client differ when you have a self-represented opposing?
- The advice might be counter intuitive.



DO NOT GIVE LEGAL ADVICE

- What is the difference between being clear and giving advice?
- What should you do if you feel yourself getting into that territory?
- ALWAYS recommend they obtain independent legal advice and have a list of representatives you can refer to.



Those particularly difficult people...

- Deep breaths; remember your objective.
- Don't stoop to their level.
- Always be cautious and meticulous.



Be prepared for anything!

- Lack of trust
- Personal interest
- Unknowledgeable
- Court discretion



In closing...

Section 2.01(3) of the Paralegal Rules of Conduct:

A paralegal shall be courteous and civil, and shall act in good faith with all persons with whom he or she has dealings in the course of his or her practice.





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TAB 3

Best Practices for Paralegals Dealing with Self-Represented Parties

Best Practices before the Landlord Tenant Board

Lyndsay Dubois

J & N Paralegal Services

October 20, 2023



Best Practices before the Landlord and Tenant Board

Lyndsay Dubois, J & N Paralegal Services

Specific Areas of Interest from the Law Society of Ontario

Paralegal Rules of Conduct

4.05 DEALING WITH UNREPRESENTED PERSONS

Dealing with Unrepresented Persons

4.05 When a paralegal deals on a client's behalf with an unrepresented person, the paralegal shall,

- (a) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the paralegal; and*
- (b) make clear to the unrepresented person that the paralegal is acting exclusively in the interests of the client and accordingly his or her comments may be partisan.*

Specific Areas of Interest for Information at LTB

<https://tribunalsontario.ca/lrb/rules-practice-directions-guidelines/>

Landlord and Tenant Board Rules

<https://tribunalsontario.ca/documents/lrb/Rules/LTB%20Rules%20of%20Procedure.html>

Practice Direction on Representation before the LTB

<https://tribunalsontario.ca/documents/lrb/Practice%20Directions/Practice%20Direction%20on%20Representation%20before%20the%20LTB.html>

Interpretation Guideline 21: Landlords, Tenants, Occupants and Residential Tenancies

<https://tribunalsontario.ca/documents/lrb/Interpretation%20Guidelines/21%20-%20Landlords%20Tenants%20Occupants%20and%20Residential%20Tenancies.html>

Summary Legal Advice Available for Unrepresented Parties

Tenant Duty Counsel Program for Tenants

- Legal Aid Ontario has created a program to provide assistance to unrepresented Tenants. This program is referred to as Tenant Duty Counsel or “TDC”.

- When logging into hearings, all unrepresented Tenants will be asked if they wish to speak with TDC before their hearing commences.
 - It is important to note that while most Members will do their best to ensure that Tenants get an opportunity to speak with TDC before their hearing commences, it is not a guaranteed right and it is recommended that Tenants make contact before their hearing to be safe.
- This program enables Tenants to obtain some summary legal advice in advance of the hearing including, but not limited to, advice on how the hearing will proceed, key items to bring forward (ie. Preliminary Issue), and how to request an adjournment.
- Legal Aid Ontario has developed community legal clinics throughout the Province. Tenants are able to call Legal Aid Ontario at 1-800-668-8258 and obtain the phone number to their local community legal clinic.
 - These clinics can also assist qualifying Tenants to complete various applications (varies depending on geographic location) that may assist the Tenant with paying down their arrears or clearing them completely, thereby allowing your Landlord clients to get paid without having to incur further legal/court fees (enforcement, skip tracing, etc.) and further allows the Tenants to maintain their housing.

Landlord Self Help Centre

- Legal Aid Ontario has also created a similar type of program for small scale Landlords.
- The LTB includes on their Notice of Hearings the contact information for the Landlord's Self-Help Centre.
- Landlord's are able to call 416-504-5190 or 1-800-730-3218 and speak with a legal professional.
- Alternatively, they can also visit their website which is filled with helpful information, fact sheets on various topics and frequently asked questions. The website is: <https://landlordselfhelp.com/>

Law Society of Ontario's Referral Service

<https://lsrs.lso.ca/lsrs/welcome>

- Additionally, you may advise the opposing party of the LSO's referral service program and provide them with the link to complete an intake for a free consultation with another licensee about their rights.

Best Practices for Dealing with Unrepresented Parties

Pursuant to Rule 4.01 of the Paralegal Rules of Conduct, it states:

“When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect.”

Don't Take it Personally

- Often times, self-represented parties tend to be more emotional and therefore do not look at the facts of a case objectively. This then makes our jobs much harder as they tend to become more entrenched with their position.
- Usually when a licensee is getting involved, these relationships have already become quite contentious.
- When acting on behalf of a party, in any litigation proceeding, unrepresented parties need to be handled more delicately and with some leniency as they are understandably scared and not familiar with the court process.
- Unrepresented parties can have a tendency to lash out.

Tips and Tricks

- I was always taught; you get more bees with honey than with vinegar! This is important to remember when dealing with any opposing side, but even more so when dealing with an unrepresented opposing side.
 - This does not mean that you don't advocate for your client though.
- We have to remember that unrepresented parties are not trained legal professionals and quite often do not have any idea how a matter will proceed.
 - DO NOT engage in sharp practice!
- If you had a telephone conversation with the opposing side, it is recommended to follow up the conversation in writing.
- Whether I am representing a Landlord or a Tenant on a matter, I notify the opposing party of my representation. This includes a letter that will accompany the specific notice to end their tenancy or in the event of an application, a letter which accompanies a copy of the application containing all pertinent information of the application (details, requested remedies, file number, etc). This will assist the opposing side with requesting access to this particular file from the LTB in the Tribunals Ontario Portal (TOP).
- The wording of these particular letters usually starts with:
 - “Please be advised that I have been retained by your [Tenant(s)/Landlord(s)], client name(s), to represent them regarding the above-mentioned matter. I would kindly request that you update your records to reflect this change.”
- The ending of these particular communications state:
 - “It is strongly recommended that you obtain independent legal advice about your rights and responsibilities regarding this matter. You may wish to contact

- **IF TENANT:** your local community legal clinic. You may obtain their phone number by calling the Legal Aid Ontario office at 1-800-668-8258 and obtain the phone number to your local clinic.”
 - **IF LANDLORD:** the Landlord’s Self-Help Centre at 416-504-5190 or 1-800-730-3218 and speak with a legal professional.”
- These reminders become increasingly more important when you enter into settlement discussions or are entering into an order on consent before a Member/Dispute Resolution Officer (DRO).
- If I have sent an offer to settle, I again reiterate their need to obtain independent legal advice using the same wording as above.
- While it may appear extremely redundant, it makes it clear to the reader that you are representing your client and your client ONLY!
- When serving documents, use tracking whenever possible to support your position.
- The LTB serves the notice of hearings, either via email or Canada Post. It is not uncommon for opposing parties to state that they were unaware of a hearing date and therefore need an adjournment to prepare. This then equates to unnecessary delays and further prejudice to your client(s).
- In an effort to mitigate these attempts, I will send a letter, copy of the application and the Notice of Hearing on all opposing parties once informed of the hearing by the LTB. This is then followed up by a Certificate of Service which gets included in my client’s Document Brief.
- If the opposing party has consented to it, I will send documents via email. Alternatively, I will either send via courier or by Canada Post. If sending by Canada Post, I will take a copy of the envelope to show the full name and address of where it was sent to.
- Further, when I send out my Document Brief, I will also include another copy of the Notice of Hearing. This ensures that the opposing party has been made aware of the hearing and hopefully prevents unnecessary delays.
- If I’m at the Board and entering into a mediated settlement or presenting an order on consent before a Member, I let the record reflect that the opposing party has been made aware to obtain independent legal advice and whether or not they chose to do so.
- When part of the order is seeking termination of a tenancy (Standard Order; Standard Order with Delayed Enforcement) or the order could lead to termination of the tenancy without notice to the Tenant (section 78 Clause in Event of a Breach), I request that the Member reiterate the consequences of these remedies and have the opposing party confirm, on the record, their understanding of same.
 - This rarely needs to be requested as most Members do this on their own accord
- It is not uncommon for self-represented parties to become upset after a hearing has concluded – not in their favour. This can sometimes turn into a complaint to the LSO. While the LSO is used to receiving these types of complaints, most of which are closed immediately, it will certainly be less stressful for you to have the written proof of your correspondence with the opposing party.



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TAB 4

Best Practices for Paralegals Dealing with Self-Represented Parties

How to Take Over a File from a Self-Represented Party
and Addendum

Robert Barber

Prevail Paralegal Services Professional Corporation

October 20, 2023



Best Practices for Dealing with Self-Represented Parties

October 20, 2023

Robert Barber- *How to Take Over a File from a Self-Represented Party*

Points for Discussion:

- Aspects to consider before taking over a matter from a self-represented party
- Setting client expectations from the outset
- Predicting for added costs and properly pricing a file takeover
- Dealing with time constraints
- Reviewing matter filings, evidence, and viability
- Reviewing procedural history of the matter
- Dealing with a client's emotional investment in their matter
- Written communications with client
- Notifying parties of your involvement
- Requesting adjournments
- Assessing and communicating consequences of mistakes
- Correcting mistakes (LTB and Small Claims Court)
- Correcting/Amending within or outside of limitation periods
- Rules of Conduct*

Addendum

Cahoon v. Franks, [1967] S.C.R., 455

Bazkur v. Coore, [2012] OJ. No. 2654



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TAB 5

Best Practices for Paralegals Dealing with Self-Represented Parties

Dealing with Self Represented Parties:
Other Things to Consider and Addendum

Michael Radan

Municipal Property Assessment Corporation (MPAC)

October 20, 2023



Best Practices for Paralegals Dealing with Self-Represented Parties

Dealing with Self Represented Parties: Other Things to Consider

Michael Radan, Municipal Property Assessment Corporation (MPAC)

1. Always ensure professional responsibilities are being met.
2. Send correspondence to self represented litigant at the start of the matter either via e mail or letter.
3. This first correspondence works to promote transparency as it provides self represented litigant with the necessary information to proceed with the matter.
4. The first correspondence outlines the following:
 - a. Important dates
 - b. The rules of the tribunal or court (provide link)
 - c. That you can provide information but not legal advice
 - d. That your duty is to your client and not to the self represented litigant
 - e. Urge them to get legal advice or representation.
 - f.

“I strongly urge you to seek legal advice in this matter. The Law Society of Ontario offers a referral service that will give you the name of a lawyer or licenced paralegal who will provide a free consultation of up to 30 minutes to help you determine your rights and options. The Law Society Referral Service can be accessed 24 hours per day at <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>”

5. Always schedule phone calls. Do not take cold calls.
6. Immediately after call send follow up correspondence documenting the phone call and what was discussed.

Addendum

In ***Kapoor v. The Law Society of Saskatchewan***, **2019 SKCA 85** the Saskatchewan Court of Appeal found that failing to inform a tribunal of relevant but non-binding authority may still violate a licensee's general duty to treat a tribunal with candour (see r. 5.1-1 of the Rules; r.4.01(1) of the Paralegal Rules).

<https://www.canlii.org/en/sk/skca/doc/2019/2019skca85/2019skca85.html>