IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Law Society of B.C. v. Bryfogle****,*
2006 BCSC 1092

Date: 20060609
Docket: L052318
Registry: Vancouver

2006 BCSC 1092 (CanLII)

Between:

The Law Society of British Columbia

Petitioner

And:

R. Charles Bryfogle, personally and doing business as ICU Consultants

Respondents

Before: The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

In Chambers
June 9, 2006

Counsel for the Petitioner:	C. Wiseman
Acting on his own behalf:	R.C. Bryfogle
Date and Place of Hearing:	May 29-31, 2006 Vancouver, B.C.

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[1] **THE COURT:** The Law Society of British Columbia comes before the court by petition, seeking various orders to restrain the respondent from engaging in activities that constitute the practice of law, and to prevent him from acting on his own behalf or on behalf of others in litigation without leave of the court.

[2] The respondent opposes the relief, arguing that the court does not have or should not exercise jurisdiction to grant the order sought, and arguing that he has not engaged in any unlawful or vexatious conduct in the course of his numerous appearances before the courts.

[3] While the petitioner and respondent characterize Mr. Bryfogle's history in the courts differently, there is little dispute with respect to the most important factual issues. The evidence establishes, and Mr. Bryfogle does not dispute, that he has, since approximately 2003, been involved in a number of proceedings before the courts, representing other persons and representing himself. At times he has been remunerated for the legal work he has done for others. Mr. Bryfogle does not have training as a lawyer and is not a member of the legal profession.

[4] The argument of the Law Society is that Mr. Bryfogle has engaged in the practice of law contrary to s. 15(1) and 15(5) of the ***Legal Profession Act,*** S.B.C. 1998, c. 9. That section, insofar as it is relevant to this application, reads as follows:

> 15(1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except
>
> (a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf, and
>
> (b) as permitted by the ***Court Agent Act***.

> [There follows a number of other exceptions, but they are not relevant to the case before me]
>
> (5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court, in the person's own name or in the name of another.

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Section 85 of the Act includes the following provisions:

> 85(5) The society may apply to the Supreme Court for an injunction restraining a person from contravening this Act or the rules.
>
> (6) The court may grant an injunction sought under subsection (5) if satisfied that there is reason to believe that there has been or will be a contravention of this Act or the rules.

[5] The practice of law is defined broadly in the ***Legal Profession Act***. The definition in s. 1 of the Act states as relevant:

> 'practice of law' includes
>
> (a) appearing as counsel or advocate,
>
> (b) drawing, revising or settling
>
> (i) …
>
> (ii) a document for use in a proceeding, judicial or extrajudicial
>
> (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,
>
> (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or
>
> (v) ….
>
> (c) doing an act or negotiating in any way for the settlement of or settling, a claim or demand for damages,
>
> (d) …
>
> (e) giving legal advice,

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> (f) making an offer to do anything referred to in paragraphs (a) to (e), and
>
> (g) making a representation by a person that he or she is qualified or entitled to do anything referred in paragraphs (a) to (e)
>
> but does not include
>
> (h) any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed.

[6] The Law Society also seeks an order under s. 18 of the ***Supreme Court Act***, R.S.B.C., c. 443. That section provides as follows:

> 18. If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[7] Finally, to the extent necessary to grant the relief that it seeks, the petitioner relies on the inherent jurisdiction of the court.

[8] The Law Society has filed extensive affidavit evidence of the respondent's activities, which it groups into five categories.

> 1. Proceedings brought by the respondent on his own behalf against School District No. 49, the Superintendent of Schools and various school trustees.
>
> 2. Proceedings brought by Brian Wickham and CDL Disposal Ltd. against various defendants. Those have been referred to as the “Eco-Waste actions”.
>
> 3. Proceedings arising out of an action originally brought by Selaive and Vannicola against Helga Kaiser and Dieter Meyer, in which the respondent has acted or purported to act on behalf of Helga Kaiser, the estate of Dieter Meyer, David Meyer, and the Gunter

Bernard Kaiser Trust. Those have been referred to as the Selaive actions.

4. Proceedings in Arizona in which the respondent has been found to be a vexatious litigant.

5. Proceedings in Small Claims Court on behalf of Purity Research Ltd.

[9] The respondent has filed substantial affidavits dealing with each of these matters.

[10] I indicated in the course of argument that I was not disposed to make an order prohibiting Mr. Bryfogle from acting solely on his own behalf in litigation in which he himself is an individual party. The only litigation that has been referred to in which Mr. Bryfogle represents himself as an individual party is the School Board litigation. There is a pending motion by the defendants in that litigation to have the matter struck as being frivolous or vexatious. I do not wish to place the judge who hears that application in an embarrassing position by passing on the propriety of that litigation or Mr. Bryfogle's conduct in it at this juncture.

[11] As it does not appear that Mr. Bryfogle is currently engaging in other personal litigation before the courts (other than, of course, defending this petition) I do not believe that there is any urgency in the motion to prohibit him from acting for himself without leave of the court. Indeed, I found Mr. Bryfogle, in making his submissions on this matter, to act in a proper and appropriate manner, and given that there is only one other case in which he is alleged to act for himself, I am not disposed to grant relief prohibiting him from acting for himself.

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[12] In refusing to make such an order, however, I wish to make it clear that I am not making factual findings with respect to the propriety or otherwise of Mr. Bryfogle's conduct generally in representing himself in the courts, and in particular I am not making any findings with respect to the School Board litigation. I am simply declining to deal with that portion of the application on discretionary grounds.

[13] If the Law Society considers that an application of this nature is necessary in the future, nothing in this judgment is intended to preclude the Law Society from renewing its application to prevent Mr. Bryfogle from representing himself without leave of the court.

[14] I do not, in the circumstances, intend to consider or say anything further about the School Board litigation.

[15] I am also not going to address the issue of the Arizona litigation. The fact that the respondent may have engaged in frivolous or vexatious litigation in Arizona is of very limited importance on the current application. Given the extensive evidence with respect to the respondent's conduct in British Columbia, the evidence of what occurred in the past in Arizona is of limited interest.

[16] With respect to the Eco-Waste actions, I am satisfied that Mr. Bryfogle filed an appearance on behalf of CDL Waste Disposal in an existing action and commenced a second action on the company's behalf. Mr. Bryfogle admits that he was paid to provide legal services to CDL. He was neither a director nor officer of CDL at the time and purported to act, as I understand it, under a power of attorney.

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[17] I have examined the documentation from the litigation and the correspondence that is included in the materials before me. I can say unequivocally that the material prepared by Mr. Bryfogle in the Eco-Waste actions does not reflect an acceptable level of legal competence. The material is prolix, difficult to follow and often nonsensical from a legal standpoint. The correspondence is insulting and fails to observe the courtesies that would be required of properly qualified legal counsel. The resulting process appears to have been highly inefficient. Parties to the litigation were not, in my view, well served by Mr. Bryfogle's attempts to act as counsel.

[18] In saying this, I do not overlook the fact that, as Mr. Bryfogle points out, there are examples of duly qualified lawyers filing inadequate or inappropriate documents and corresponding with colleagues at the bar in an unprofessional manner. In the case of a lawyer acting unprofessionally, the Law Society, as a self-regulating profession, has extensive disciplinary powers that it may exercise. Compulsory errors and omission insurance also provides a measure of security for the public against incompetent or unprofessional lawyers. These safeguards do not exist in respect of non-lawyers who purport to act as legal counsel.

[19] In the Selaive action, Mr. Bryfogle became involved after the plaintiff in the original action had obtained judgment. Mr. Bryfogle purported to represent a variety of parties at different times, bringing bizarre applications to re-open the matter and making legally unfounded arguments. He also purported to act for a party in a claim against a former lawyer arising out of the litigation.

[20] I do not intend to go into all of the details of the action, which are adequately discussed in the evidence. Nor do I suggest that everything that Mr. Bryfogle did was inappropriate. Suffice it to say that I find that Mr. Bryfogle engaged in the practice of law for a fee in respect of the case. His representation of his purported clients did not meet basic standards of competence or courtesy. Once again, the procedures followed were, at many times, not appropriate.

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[21] The actions of Mr. Bryfogle in both the Eco-Waste litigation and the Selaive litigation have been contrary to the public interest. Neither his clients, their adversaries, nor the courts have been well served by his interventions.

[22] The final matter that I will refer briefly is the Purity Research litigation. In that action, Mr. Bryfogle purported to act for Purity Research. He represented that he was an employee of that company. I am satisfied on the evidence that if he was employed by that company at all, it was exclusively or almost exclusively to provide representation in court.

[23] I find that Mr. Bryfogle was engaged in the unauthorized practice of law in respect of his representation of Purity Research. He was not a regular employee in the day-to-day operations of the business. In the result, as discussed in ***Law Society (British Columbia) v. Guntensperger*** (1993), 83 B.C.L.R. (2d) 194, Mr. Bryfogle was not entitled to represent the company in litigation.

[24] On the face of it, then, Mr. Bryfogle has engaged in the practice of law contrary to the provisions of the ***Legal Profession Act***. He puts forward a number

of arguments to support his position that the court does not have jurisdiction in this matter or that he has not acted unlawfully.

[25] Firstly, Mr. Bryfogle says that the Law Society is estopped from arguing that he improperly represented parties before the court because the court itself has allowed him to act, sometimes over the objection of the opposite party.

[26] The matter, in my view, is not a matter of *res judicata* or issue estoppel. The Law Society has not been party to previous proceedings and would not, therefore, normally be governed by the doctrine of *res judicata* in respect of earlier rulings. More importantly, however, I do not understand any of the previous rulings to have decided that Mr. Bryfogle was in compliance with the ***Legal Profession Act*** in purporting to represent parties before the courts. The fact that the court has allowed Mr. Bryfogle to appear and argue cases in the past does not establish that he was in compliance with the ***Legal Profession Act*** in doing so. No previous decision of this court decided that Mr. Bryfogle was entitled to engage in the practice of law in this province.

[27] Mr. Bryfogle claims the right to represent parties before the court by virtue of the ***Court Agent Act***, R.S.B.C. 1996, c. 128, the ***Power of Attorney Act***, R.S.B.C. 1996, c. 370 and the ***Trustee Act***, R.S.B.C. 1996, c. 464.

[28] The ***Court Agent Act*** only applies to municipalities in which there are fewer than two members of the Law Society in practice, or places in which there are fewer than two members of the Law Society in practice within an eight kilometre range of

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the place where the court sits. I am told that the Act, therefore, applies for the purposes of this case, in Bella Bella. Section 1 of the Act provides as follows:

> 1. Despite any other law, a person whose name is on the provincial list of voters for the electoral district in which the court is held is entitled to appear in the Supreme Court or in the Provincial Court or before a justice as the attorney and advocate of any party to any proceedings in that court even though the person is not a practising lawyer.

[29] The provision is a limited one. In particular, it does not provide that in areas where the Act applies, a person may act other than as an attorney and advocate before the court. It does not provide that a person may generally practice law in that area.

[30] I find that the Act means what it says. It does not allow non-lawyers to give legal advice or prepare pleadings and other documents for court. It only allows that a non-lawyer may, in the remote areas where the Act applies, appear in court and advocate. While the statute is silent with respect to whether a person may charge a fee for those services, it seems to me that it is implicit in the statute that a fee may indeed be charged.

[31] To the extent, then, that Mr. Bryfogle has appeared in court in Bella Bella and has been paid to advocate on behalf of a client, I find that his activities do not amount to the unauthorized practice of law. However, his appearances outside of that place remain violations of the ***Legal Profession Act***, as do his activities in representing clients there aside from his appearances before the court to advocate.

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[32] Mr. Bryfogle relies heavily on the ***Power of Attorney Act***, but I can find nothing in that Act that empowers him to engage in the practice of law. Unfortunately, because the word "attorney" is often used, particularly in the United States, to refer to a lawyer, it seems that some people, including Mr. Bryfogle, have assumed that receiving a power of attorney entitles them to engage in the practice of law on behalf of the person who gives the power of attorney. That is not the case.

[33] A person acting under a power of attorney is known as an "attorney in fact". He or she may be empowered to undertake transactions on behalf of the grantor of the power and may be entitled to bind that person. Being an attorney in fact, however, is a different thing from being an "attorney at law". Nothing in either the common law or the ***Power of Attorney Act*** allows a person acting under a power of attorney to engage in the practice of law.

[34] Similarly, nothing in the ***Trustee Act*** or in the powers that equity confers on a trustee serves to allow a trustee to engage in the practice of law.

[35] While Mr. Bryfogle put forward other arguments attempting to demonstrate that he is entitled to engage in the practice of law in British Columbia, none of those arguments are, in my view, tenable. I mention only one other argument, that engaging in the practice of law is a liberty right protected by s. 7 of the ***Canadian Charter of Rights and Freedoms***. I do not agree that the right to practice law is a right encompassed by s. 7 of the Charter. Indeed, the contention that it is such a right was rejected by the B.C. Court of Appeal in ***Law Society of B.C. v. Lawrie***, (1991), 59 B.C.L.R. (2d) 1. That case remains good law.

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[36] I am satisfied that Mr. Bryfogle has, on numerous occasions, engaged in the practice of law contrary to the ***Legal Profession Act***. I am also satisfied that there is good reason to believe that he will continue to do so unless an injunction is granted. In my view, those circumstances are sufficient to warrant the granting of an injunction under s. 15 of the ***Legal Profession Act***.

[37] When I add to those circumstances my finding that Mr. Bryfogle's representation of persons in litigation has not been in the public interest because he has not represented parties competently, adequately or professionally, I consider that the case for an injunction is overwhelming.

[38] I am therefore granting an injunction. That injunction will be in the terms sought, with certain exceptions. The respondent, Mr. Bryfogle, until such time as he becomes a member in good standing of the Law Society of British Columbia, is prohibited and enjoined from:

> a) appearing as counsel or advocate;
>
> b) drawing, revising or settling a document for use in a proceeding, judicial or extrajudicial;
>
> c) drawing, revising or settling a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person;
>
> d) drawing, revising or settling a document relating in any way to proceedings under a statute of Canada or British Columbia;
>
> e) doing an act or negotiating in any way for the settlement of or settling a claim or demand for damages;
>
> f) giving legal advice; and
>
> g) offering to or holding himself out in any way as being qualified or entitled to provide to a person the legal services set out in the preceding subparagraphs,

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for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed.

[39] The second order will be start in the terms sought in the petition: “The respondent is prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court in his own name or in the name of another person without leave of the court”. The following words will be added, however, to paragraph 2: "other than in representing himself as an individual party to a proceeding, acting without counsel, solely on his own behalf." Thus, Mr. Bryfogle will be entitled to act in court on his own behalf where he is an individual party to a proceeding. He will not be entitled, however, to act for others.

[40] I am not granting the relief set out in paragraph 3, that is, to the effect that the respondent is a vexatious litigant. As I have indicated, I am, on discretionary grounds, not prepared to entertain that application.

[41] With respect to paragraph 4, the respondent will be required to inform general counsel of the Law Society of British Columbia of any proceeding or legal matter in which he is involved in any manner whatsoever other than in representing himself as an individual party to a proceeding, acting without counsel solely on his own behalf.

[42] In granting this order, I recognize that there is, apparently, some debate as to whether s. 15(5) of the ***Legal Profession Act*** prohibits a person from commencing, prosecuting or defending a proceeding as an agent for another person if the person acting is not being paid for that service.

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[43] In ***Yal v. Minister of Forests***, 2004 BCSC 1253, Halfyard J. appears to have assumed that s. 15(5) does extend that far. More recently, in ***Law Society of B.C. v. Dempsey***, 2005 BCSC 1277, Williams J. appears to suggest that it does not.

[44] In my view, the language of s. 15(5) is broad enough to prohibit a person from acting on behalf of another in commencing, prosecuting, or defending a proceeding. A person purporting to perform those acts as an agent for another is, in my view, "acting in the name of another person." I do not see that anything in s. 15(5) purports to qualify the phrase, "in the name of another person," by suggesting that it really means "in the name of another person, but for the benefit of the person who is acting." Accordingly, to the extent that Williams J.'s reasons may be seen as giving a restrictive interpretation to s. 15(5), I am in respectful disagreement and prefer the interpretation of the section given by Mr. Justice Halfyard.

[45] In the result, I am satisfied that s. 85 of the ***Legal Profession Act*** is sufficient authority to grant the relief that I have thus far referred to.

[46] I am satisfied, however, that in this case I should go somewhat further. Because Mr. Bryfogle's representation of others has not been competent, professional and in the public interest, I am satisfied that pursuant to the inherent jurisdiction of the court, I should also prohibit Mr. Bryfogle from acting on behalf of other persons under the authority or purported authority of the ***Court Agent Act***.

[47] I am not making an order under s. 18 of the ***Supreme Court Act***. Mr. Bryfogle remains at liberty to represent himself when he is the named individual party in an action without seeking leave of the court.

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[48] That leaves, I think, only the question of costs. Before I get to that, I will first ask both of you whether there is any other matter that you feel I have omitted to deal with.

MS. WISEMAN: My Lord, the Law Society would seek an order dispensing with Mr. Bryfogle's approval of the form of the order.

MR. BRYFOGLE: Yes, My Lord, there are two things, if I may say. I thought I heard the court mention, during the proceeding, that if I appeared as a trustee for an established trust that that would be allowed under law. Am I reading that you have now changed that position?

THE COURT: During the course of hearing, what I indicated was that a trustee generally has the right to appear on behalf of a trust where the trust is a party. I have not changed my view of that general proposition of law. If that situation arises, however, because your representation of the trust would be contrary to my order, it will be necessary for you to seek leave of the court to represent the trust.

MR. BRYFOGLE: Okay, fine, thank you. And the last one, My Lord, is that in our discussion that when I presented ***Law Society of British Columbia v. Mangat***, 2001 SCC 67, [2001] 3 S.C.R. 113 to the court and I discussed the fact that I do, in fact, have ongoing proceedings under the ***Bankruptcy and Insolvency Act***, R.S.C. 1985, c. B-3, and it was my understanding that you felt that that was outside the capacity of this court to order.

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THE COURT: I do not know whether it is or not. The wording of the ***Immigration Act,*** R.S.C. 1985, c. I-2***,*** is such that ***Legal Profession Act*** cannot restrict someone from acting as an agent under that Act. If this issue arises within bankruptcy proceedings, it will be up to you to draw to the attention of the court the fact that this order exists and make argument as to whether it is applicable to the bankruptcy proceeding or not.

MR. BRYFOGLE: If I may interrupt briefly. This would include even where I am already in court, in Prince George, in bankruptcy?

THE COURT: Yes. I think the court ought to be made aware of the order, and then make a decision itself on whether the order in capable of applying to bankruptcy proceedings.

MR. BRYFOGLE: And also matters where I am appearing personally? In bankruptcy? I am actually doing that.

THE COURT: Well, it does not apply to matters where you are appearing personally on your own behalf, whether in bankruptcy or otherwise.

MR. BRYFOGLE: Okay, thank you, My Lord.

[49] THE COURT: I should say, whether this ruling applies in bankruptcy may depend on the particular type of bankruptcy proceeding as well, and so I am refraining from making any ruling specifically dealing with bankruptcy. That will be up to the court or tribunal in which you seek to appear on bankruptcy matters.

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MR. BRYFOGLE: Thank you, My Lord.

THE COURT: Now, Ms. Wiseman has requested that your signature on the formal order be dispensed with. What is your position?

MR. BRYFOGLE: I have no problem. I have confidence, My Lord, that you will -- my presumption is that you will be signing the order, am I correct?

THE COURT: I can make that direction.

MR. BRYFOGLE: If you can make that direction so the order comes back to you, I have confidence that the order will reflect what you have stated today.

THE COURT: Ms. Wiseman, is that satisfactory, from your standpoint?

MS. WISEMAN: Indeed, My Lord.

[50] THE COURT: All right, I am going to direct then that the draft order be directed to me for my signature in this case.

{Discussion between the parties and the Court and Submissions on Costs}

[51] THE COURT: The normal rule is that costs follow the event on Scale 3. I am not satisfied that I should depart from that rule, but what I do say is this, there was an awful lot of paper put before me in this case. I am not completely convinced that all of it was necessary. I am going to suggest to the Law Society that it carefully calculate what costs, particularly in respect of disbursements for copying, ought to be included in the bill of costs. Obviously, if you are unable to agree on the amount

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of costs, it can be assessed before the Registrar, who will come to a conclusion as to what the reasonable disbursements are.

[52] So I am ordering costs on Scale 3 with respect to this proceeding.

{Further Discussion Between the Court and the Parties}

MS. WISEMAN: My Lord, if it would assist the court, if Your Lordship would like to make an order as to a sum certain for costs, the Law Society is quite content to proceed in that fashion, perhaps an appropriate amount that would address both Mr. Bryfogle's concern and Your Lordship's, and approximate the amount that the Law Society has expended in connection with this matter be the total amount of $2,000.

MR. BRYFOGLE: I agree.

THE COURT: Two thousand including disbursements?

MS. WISEMAN: Including disbursements.

MR. BRYFOGLE: I agree. My Lord, I have no problem with that.

[53] THE COURT: In that case, I will make the order and costs will be fixed at $2,000 including disbursements.

“H.M. Groberman, J.”
The Honourable Mr. Justice H.M. Groberman