IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Law Society of B.C. v. Yehia,***
2008 BCSC 1172

Date: 20080827
Docket: No. L001894
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And:

Fred Yehia

Respondent

Before: The Honourable Madam Justice Allan

Reasons for Judgment

Counsel for the Law Society of B.C.	Brent Olthuis & Micah B. Rankin
The Respondent	Appeared on his own behalf
Date and Place of Hearing:	August 18, 19, 20, and 22, 2008 Vancouver, B.C.

[1] The Law Society of British Columbia applies under Rule 56 of the ***Rules of Court*** for an order that Mr. Fred Yehia be found in contempt of Court and incarcerated for 30 days for deliberately disobeying an Order of this Court pronounced November 4, 2004 and entered November 9, 2004 (the "Consent Order").

Contempt:

[2] The principles governing an application for an order of contempt for breaching an order of the Court have been stated many times. The Court exercises its power of contempt to uphold its dignity and process. The onus is upon the applicant to prove the elements of contempt beyond a reasonable doubt. Specifically, the applicant must prove that the alleged contemnor had notice of the order and deliberately engaged in conduct that disobeyed it. The evidence in support of the application must conform to the rules of admissibility at a trial. If the order is ambiguous, the alleged contemnor is entitled to the most favourable construction.

Background:

[3] Mr. Yehia became a member of the Law Society in 1981 and resigned in 1989. He pleaded guilty to theft and was sentenced to four years imprisonment. He consented to his disbarment pursuant to the ***Legal Profession Act***, S.B.C. 1998, c. 9 (the "***Act***"). He has not been reinstated.

[4] Commencing in 1994, complaints arose that Mr. Yehia was engaging in the practice of law. He declined to provide an undertaking to desist from engaging in

unauthorized practice and in December 1996, the Law Society filed a Petition seeking an order that he be enjoined from practicing law. However, the Law Society was unable to locate Mr. Yehia in order to serve him. In July 2000, the Law Society filed a second Petition and Mr. Yehia agreed to a consent order dated March 22, 2001 and entered on March 23, 2001 which enjoined him from unlawfully practicing law (the "2001 Order"). It contained the following substantive terms:

> THIS COURT ORDERS that the Respondent, either personally or through any other entity, shall not engage in the practice of law as defined in Section 1 of the [Legal Profession] Act, unless and until the Respondent shall become a member in good standing of the Law Society of British Columbia. Without limiting the generality of the foregoing, the Respondent shall not:
>
> (a) appear as counsel or advocate;
>
> (b) draw, revise or settle
>
> > (i) documents relating to a memorandum or articles under the *Company Act,* or minutes, resolutions or other document relating to the incorporation, registration, or organization of a corporate body;
> >
> > (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) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
>
> (c) do any act or negotiate in any way for the settlement of, or settle a claim or demand for damages;
>
> (d) give legal advice;,
>
> (e) offer to do anything referred to in paragraphs (a) to (d) above;

> (f) make a representation that he is qualified or entitled to do anything in paragraphs (a) to (d) above; or
>
> (g) represent that he is a lawyer.

[5] The Law Society continued to receive complaints and brought contempt proceedings in January 2004 on the basis that Mr. Yehia had breached the terms of the 2001 Order. Through his counsel Mr. Mackoff, Mr. Yehia consented to terms of the Consent Order. The preamble noted that Mr. Yehia agreed to make full restitution to four named affiants in the amount of $10,000 in lieu of a fine in that amount and 250 hours of community service or an order of committal. The preamble also noted that in exchange, the Law Society agreed to refrain "from taking any further action against [Mr. Yehia] with respect to [his] conduct relating to the unauthorized practice of law occurring before the date of this Order."

[6] The Consent Order contains the following terms:

> 1. The Respondent be held in contempt of this Court for disobeying [the 2001 Order].
>
> 2. The Respondent, until such time as he becomes a member in good standing of The Law Society ..., continue to be prohibited and enjoined from the unauthorized practice of law, including:
>
> (a) appearing as counsel or advocate,
>
> (b) drawing, revising or settling
>
> (i) a petition, memorandum or articles under the *Company Act,* or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
>
> (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) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
>
> (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
>
> (d) agreeing to place at the disposal of another person the services of a lawyer,
>
> (e) giving legal advice,
>
> (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 to in paragraphs (a) to (e).

[7] That wording tracks the definition of "practice of law" in s. 1(1) of the ***Act.***

[8] Section 1(1) goes on to provide an exception to the definition of the "practice of law" in the ***Act***:

> ... 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.

[9] Mr. Olthuis, counsel for the Law Society, notes that exception is not applicable to Mr. Yehia; s. 15(3) specifies that the exception is not applicable to disbarred lawyers.

[10] Mr. Yehia wrote to Mr. Voith, counsel for the Law Society, on November 5, 2007, asserting that the Consent Order does not contain a prohibition that "the Respondent [not] .... represent himself as a lawyer." In his submissions before the Court, he suggested that the Consent Order is ambiguous insofar as it does not

specifically contain the provision in (g) of the 2001 Order that he not "represent that he is a lawyer." There is no merit to that argument. First, the Consent Order specifies that he is in contempt of Court for disobeying the 2001 Order and states that he shall "continue to be prohibited and enjoined from the unauthorized practice of law." Hence he continued to be prohibited and enjoined from practicing law or representing that he is a lawyer. Second, he was prohibited by sections (g), (d) and (e) of the Consent Order from "making a representation ... that he ... is qualified or entitled to" "agree or place at the disposal of another person the services of a lawyer or give legal advice."

[11] The Consent Order also required Mr. Yehia to pay the Law Society's costs in the amount of $640. He was ordered to pay a total amount of $10,640 pursuant to a payment schedule: $1,700 on February 15, 2005; $1,700 on April 15, 2005; July 15, 2005 $1,740; and $5,000 one year after the date that the Order was entered (November 10, 2005).

Is Mr. Yehia in contempt of the Consent Order?

[12] Mr. Yehia concedes that he has always had full knowledge of the terms of the Consent Order. He asserts that he considers himself bound by its terms and conditions.

[13] The Law Society submits that Mr. Yehia has breached the Consent Order by:

- Failing to make the $5,000 payment owing under paragraph 4(d) of Consent Order in a timely fashion; and

- Representing that he is a lawyer, contrary to paragraph 2(g) of the Consent Order.

Did Mr. Yehia fail to make payments under the Consent Order in a timely fashion?

[14] Prior to the execution of the Consent Order, Mr. Yehia's counsel requested and obtained an extension of time for the first payment from January 15, 2005 to February 15, 2005. Mr. Yehia was late making the first payment of $1,700 due February 15, 2005. The Law Society granted him an extension to February 28, 2005. Mr. Voith specified in his letter to Mr. Yehia of February 24, 2005 that there would be no further extensions granted on that or future payments.

[15] The second payment, which was due on April 15, 2005, was not made until June 9, 2005. The Law Society had decided to commence contempt proceedings but it was unable to effect service of the contempt motion on Mr. Yehia. On June 9, 2005, Mr. Yehia delivered two bank drafts to Mr. Voith's office – one in the amount of $1,700 representing the April 15 payment and one for $1,740 representing the third July 15 payment. Mr. Yehia took the position, and argued before this Court, that he had earlier sent the April 15 payment to Mr. Voith's office on April 23, 2005. I do not accept his evidence in that regard. He was unable to provide any documentation that would indicate such a payment was made, either by cheque, bank draft or otherwise. His assertion that he was unable to produce such a document because the bank had required him to surrender the receipt for the missing bank draft before they would give him a refund is not worthy of belief. There is no reason why a person in Mr. Yehia's position would not have made a copy of the receipt had the

bank draft truly gone astray. In the circumstances, I draw the inference that Mr. Yehia only made the second (and third) payments to ward off the contempt proceedings commenced by the Law Society.

[16] The fourth payment, due November 9, 2005 was not paid until August 8, 2008, shortly before this hearing. Mr. Yehia also paid an additional $500 as the payment schedule did not add up to the full amount of $10,640 that he was obliged to pay under the Consent Order. Mr. Olthuis notes that the payment was 1,002 days late.

[17] Mr. Yehia deposes that the monetary penalty imposed some considerable financial hardship on him as he was self-employed, with a limited income, and contributing to the university fees of his two daughters. He says that in early November 2005, he attempted to contact Ms. Ramsay, counsel for the Law Society, to propose that the final payment – due November 9, 2005 – be made in further instalments. He says he left a voice message but did not hear back from her. The correspondence indicates that Mr. Yehia did present that proposal to Ms. Ramsay in April 2006. She responded that the Law Society would not consent to payment of the final amount in instalments. Mr. Yehia deposes that "I felt it prudent at the time to make application to vary the terms so as to permit payment of the $5,000 in instalments." However, he took no steps to make the appropriate application to Court, although he says he took steps to attempt to arrange a convenient day for the application with Ms. Ramsay.

[18] Mr. Yehia says that after speaking to Ms. Ramsay in the spring of 2006, he decided to regularly put aside the monies that he would have used for instalments to create a fund to pay the Law Society once it reached $5,000. He says that in June 2006 he suffered a setback to that plan when approximately $2,940 that he had ear-marked for the fund was stolen from his home. He deposes that theft of the money, personal belongings, his passport and credit cards "is a matter of record and was the subject of an insurance claim which I ultimately withdrew due to the low limit of coverage in my insurance policy for stolen cash." However, when he was cross-examined on this issue, he stated that he did not have any documentation regarding the alleged theft because he had not made any insurance claim.

[19] By letter dated June 18, 2007, Mr. Yehia advised Ms. Ramsay that he understood that her client "may be ready to display some flexibility in the matter of the final payment" and told her that he had managed to accumulate at least half of the payment. A proposed payment schedule was rejected.

[20] This contempt hearing was initially scheduled to be heard on October 31, 2007. It did not proceed because Mr. Yehia telephoned the Registry from UBC Hospital to say that he was suffering from severe respiratory distress and a concomitant lack of consciousness that required medical intervention. At a hearing before Master Scarth the previous day, on October 30, 2007, Mr. Yehia stated:

> There is a payment that was due almost a year ago now of another $5,000. I intend to deal with this matter tomorrow. I wrote Ms. Ramsay because I wasn't in the position to make the balloon payment of $5,000. I asked her for time to make that payment, that final payment, in instalments. Three months later I got the answer from the Law Society, and they refused such an arrangement. What I have

> done since then is accumulated all of the instalment payments which I otherwise would have been sending to Ms. Ramsay's office, and so I have most of it organized now, and I'm prepared to pay that. That's not before Your Honour today. That's a matter that will be heard by the judge in the contempt motion.

[21] In his affidavit of November 8, 2007, Mr. Yehia states he had "expressed [his] intention to pay the entire balance *before* the hearing of the Petitioner's Notice of Motion for Contempt" to Master Scarth [emphasis in the original]. He further deposes that he did not expect to pay the monies the following day:

> I did not expect that the hearing of the Petitioner's motion would proceed on October 31, 2007, because my motion was for discovery of the deponent Farha Gass Musse, sworn June 26, 2006, and if successful, I anticipated that Master Scarth would grant me sufficient time to conduct the examination before a Court reporter. If successful in the application, this would have meant a de facto application for adjournment of the hearing of the Petitioner's motion scheduled for the next day. In the result, the Master ordered that Mr. Musse be examined, but in Court on the next day.

[22] On November 1, 2007, Mr. Olthuis advised Mr. Yehia that the Law Society considered Mr. Yehia's failure to pay any of the funds he had accumulated to be an aggravating factor:

> ... during the course of your lengthy submissions before Master Scarth on 30 October, you suggested that you were in possession of funds to purge your contempt. You did not remit those funds to our firm then, nor of course did you attend court on the 31st to make the remittance. We take the view that the failure to pay the outstanding amounts and purge your contempt when you are admittedly in possession of sufficient funds is a very serious matter and we will if necessary bring this to the Court's attention.

[23] Mr. Yehia deposes that the Law Society's position in November was "the first indication that in fact the Petitioner would accept a partial payment, and came as quite a relief to me." In response he wrote to Mr. Olthuis on November 6:

> I was surprised to see in you [sic] letter at least the suggestion that a partial payment of funds toward the last payment of $5,000 might be acceptable to the Law Society. Ms. Ramsay will confirm that she contacted me in May, 2006, to say that the Law Society would *not* accept partial or instalment payments.
>
> You indicate that 'failure' to pay '*some*' funds that could be applied toward the outstanding amount ... is an aggravating factor that the Court should take into consideration."
>
> Again it is important to be precise. Have your instructions changed? If so, when? Will the Law Society accept a partial payment at this time? Is it acceptable to have the balance paid prior to the hearing? Once paid, does the Law Society still intend to take issue with the overdue payment?

[24] The Law Society did not respond.

[25] Mr. Yehia prepared and filed his affidavit on November 8, 2007, concluding with the assertion that he would "endeavour to the utmost of [his] ability to ensure that the payment is made in full prior to the resumption of the hearing." He stated: "I do not feel contemptuous of the Honourable Court or its Order and my lack of funds or the inability to pay the final payment in its entirety should not be so construed."

[26] In fact, Mr. Yehia did not pay any part of the $5,000 owing, either in Court or out of Court, prior to August 8, 2008. He testified that because he was unrepresented, he thought it best to ask the Court to agree with his plan. In his submissions, Mr. Yehia said he had intended to ask me on October 31 for assistance or directions. Had Mr. Yehia wished to deal with the matter in Court, he

could have raised the matter before me on November 29, 2007 at a pre-hearing conference, on January 31, 2008 at the contempt hearing which was adjourned at the request of the Law Society after Mr. Yehia produced heaving redacted documents he had obtained from the R.C.M.P. under the ***Freedom of Information Act***, or on June 20, 2008 at a pre-hearing conference.

[27] The evidence does not support Mr. Yehia's contention that he waited three months to hear from the Law Society after he had proposed a schedule of payments in respect of the final payment. By his own admission, Ms. Ramsay responded to his instalment proposal verbally in late April and early May, 2006. Further, it is not the case that Ms. Ramsay told him that the Law Society would not accept partial or instalment payments. She clearly confirmed in her letter of June 19, 2007 that the Law Society would not agree to the instalment payment schedule Mr. Yehia proposed. She reiterated that the Law Society would bring that proposal and any payment that he made, whether partial or in full, prior to a contempt application to the attention of the Court at a contempt hearing. Mr. Yehia says that he interpreted that position as preventing him from making partial payments. He adamantly refused to concede that such a position was to his benefit rather than to his detriment.

[28] In my opinion, there is no question that Mr. Yehia is in contempt of the Consent Order by his failure to make the $5,000 payment, or any part of it, in a timely fashion. He was fully aware of the terms of the Consent Order and his breach of the payment provisions was deliberate and calculated. He was also aware from the time that it was due, that he could make an application to Court to vary the

Consent Order with respect to payments. There is no evidence that he has been unable to pay it since November 2005, and by his own admission, he had accumulated at least part of the amount owing by the spring of 2006.

Did Mr. Yehia represent to Mr. Musse that he was *a* lawyer?

[29] Mr. Musse, a taxi driver from Somalia, deposes that, on three occasions, Mr. Yehia represented himself as an immigration lawyer and businessman who could help him bring his wife from Ethiopia. He says that the first occasion was in October 2004 and the second and third occasions were at meetings on November 17, 2004, and April 2005 (after the Consent Order was entered). On November 17, 2004, Mr. Musse gave Mr. Yehia $1,450 for what he understood to be legal services and received a receipt for "immigration services."

[30] Mr. Musse deposes that he was employed as a taxicab driver on October 10, 2004 and picked up Mr. Yehia on that date. He drove him from the Sheraton Wall Centre Hotel to the area of Balaclava and 33rd Avenue in Vancouver. He says that Mr. Yehia asked where he was from and if his family was with him. Mr. Musse replied that he was from Somalia and his wife was in Ethiopia. When Mr. Yehia asked if he wanted to bring his wife to Canada, Mr. Musse replied that he was planning to sponsor her as an immigrant to Canada. Mr. Yehia then told him that he was an immigration lawyer and a businessman with three offices in Vancouver and two offices overseas. Mr. Musse states that he has a clear memory of Mr. Yehia using the word "lawyer" during that conversation. Mr. Musse says that during the taxicab ride, Mr. Yehia told him that he brings people to Canada from all over the

world. He talked about the fees that would be required to sponsor Mr. Musse's wife, the fee he would charge Mr. Musse for bringing his wife to Canada, and the immigration process which would take between six and 12 months,. Mr. Yehia gave him his business card. That card states "Rayvic Investments Inc. Fred Yehia President." It gives an address in Vancouver on West 41st Avenue and an address in Bangkok.

[31] Mr. Musse says that he called Mr. Yehia and scheduled an appointment to meet him at an office on West Hastings Street. Mr. Musse believes that the date of that meeting was November 17, 2004 because he gave Mr. Yehia $1,450 as part payment for his services and the immigration fees and Mr. Yehia gave him a receipt with that date on it. Mr. Yehia told him he would have to pay a further $1,000 when he brought his wife to Canada. Mr. Yehia asked him many questions and filled out some forms that he understood to be immigration forms. Mr. Musse deposes that "[a]t the meeting Mr. Yehia again told me that he was an immigration lawyer."

[32] Mr. Musse deposes that he had another meeting with Mr. Yehia in approximately April 2005. That meeting was at a different office on West Georgia Street. Mr. Yehia swears, "I clearly recall Mr. Yehia referring to himself as an immigration lawyer at this meeting as well." Mr. Yehia gave him a letter from the Canadian Embassy (Visa Section) in Nairobi, Kenya confirming their approval of his wife's sponsorship. The visa Officer stated: "I have determined that you do in fact meet the requirements of a sponsored application." The Officer also indicated they would forward the requisite documents to his wife.

[33] After the April meeting, Mr. Musse was unable to contact Mr. Yehia. He became suspicious and went to the office on West Georgia Street where they had met. He was told that Mr. Yehia only rented office space there for an hour or two on occasion. He went to the address listed on Mr. Yehia's business card but it turned out to be only a Post Office Box. He then contacted Citizenship and Immigration Canada who wrote to him by letter dated May 18, 2005 advising that they had no record of receiving any application with respect to his wife, other than one he had previously submitted 10 years earlier. He was advised that all spousal applications are processed through Mississauga, Ontario and not through Nairobi. He then approached the MOSAIC Legal Advocacy Project ("MOSAIC") and filed a complaint with the R.C.M.P. who, he says, described the letter from Nairobi as a forgery. While that evidence is hearsay and inadmissible to prove the truth of its contents, I note that Mr. Yehia stated that all applications from Canada go through Mississauga whereas applications from Ethiopia would be handled initially through Nairobi. He offered no explanation as to why the Canadian Embassy in Nairobi would send a letter approving the applicant's sponsored spousal application to Mr. Musse in care of Mr. Yehia's postal box address on February 25, 2005. In his cross-examination of Mr. Musse, Mr. Yehia made the preposterous suggestion that the letter from the Embassy had informed them that the previous application for Mr. Musse's wife had been abandoned rather than refused and that it was now "ok to proceed".

[34] On September 25, 2005, when he would have been aware of Mr. Musse's complaint, Mr. Yehia wrote Mr. Musse a lengthy self-serving letter indicating, *inter alia,* that Mr. Musse had exhibited "a total lack of cooperation with the process and

... non-responsiveness to the requirement for information to complete the application process." He indicated that he was prepared to reimburse Mr. Musse for the $1,450 if Mr. Musse executed a release of all claims against him. Mr. Musse deposes that he was prepared to sign the release to get his money back but, following an initial phone call in which Mr. Yehia promised to set up a meeting, he was never able to contact Mr. Yehia to arrange such a meeting. He has never received the $1,450. I prefer his evidence to that of Mr. Yehia who deposes that Mr. Musse never attempted to contact him to advise him that he would sign the release.

[35] Mr. Musse subsequently completed the immigration process for his wife, who has now joined him in Canada.

[36] Mr. Yehia cross-examined Mr. Musse on his affidavit. Mr. Musse stated that a person at MOSAIC had told him that Mr. Yehia was not entitled to hold himself out as an immigration lawyer in June 2005 and referred him to the Law Society.

[37] Mr. Musse was adamant that Mr. Yehia had only given him one form, the receipt for payment, and the letter from the Canadian Embassy in Nairobi. Mr. Yehia tendered additional forms, some of which Mr. Musse denied having seen and one of which he conceded bore his signature. Mr. Yehia showed him one form and suggested he had filled it out but he flatly denied that it contained his writing.

[38] Mr. Musse staunchly denied Mr. Yehia's suggestion that, during the taxi ride in October, he may have said to Mr. Musse that he had been a practicing lawyer but he did not practice anymore and was working as an immigration consultant.

[39] Mr. Yehia asserts that in 2001, "out of an abundance of caution", he began to ask clients to sign a contract covering the provision of his immigration services. In that regard, he appended to his affidavit, a number of contracts he says that he utilized in immigration matters. While Mr. Olthuis objected to their admissibility on the basis they were hearsay, I find that they are admissible on a limited basis to support his assertion that it was his practice to prepare such documents for his clients' signature. However, Mr. Musse adamantly denied receiving a letter dated October 18, 2004 which purportedly sets out the proposed agreement for Mr. Yehia's services. It refers to Mr. Yehia as the "Agent" and Mr. Musse as the "Client" and specifies that the Agent is not acting as a legal representative. It contains a provision at the end for Mr. Musse to sign under the words "the foregoing terms and conditions are hereby agreed this ___ day of October, 2004." Mr. Musse has not signed it and I accept his evidence that he never received such a letter. Mr. Yehia offers no explanation as to why he did not require Mr. Musse to sign such a letter before giving him a receipt in November for his $1,450 payment.

[40] Mr. Musse denied the "review of the history of our dealings" which Mr. Yehia set out in his letter of September 23, 2005. It is significant that Mr. Yehia prepared that letter after Mr. Musse had made his complaints to the Law Society and the R.C.M.P.

[41] I am satisfied beyond a reasonable doubt that Mr. Yehia told Mr. Musse that he was an immigration lawyer on October 10, 2004. Such a representation, while not a breach of the Consent Order in issue, was egregious conduct on the part of Mr. Yehia. It was a flagrant breach of the 2001 Order that he not represent himself

as a lawyer. In response to contempt proceedings brought by the Law Society in respect of numerous breaches of the 2001 Order, he had retained Mr. Mackoff as counsel to negotiate a further consent order acknowledging his contempt but avoiding the possibility of incarceration as a penalty. The drafts of the proposed consent order were being negotiated between Mr. Mackoff and Mr. Voith throughout September and October 2004.

[42] I also find that Mr. Musse, once told by Mr. Yehia that he was an immigration lawyer, continued to believe that to be true until he was advised by a lawyer at MOSAIC that Mr. Yehia was not authorized to practise law. That belief would be reinforced by Mr. Yehia's propensity to utilize the initials "L.L.B." on his letterhead, indicating that he has a law degree. The fact that a person may have a law degree but not be authorized to practice law is too subtle a distinction to be readily grasped by many unsuspecting and unsophisticated potential clients.

[43] However, the Law Society does not rely upon the October 10, 2004 representation, made before the Consent Order, or the impression of Mr. Yehia's status that remained with Mr. Musse over the subsequent months. It relies solely on the further representations allegedly made by Mr. Yehia in November 2004 and April 2005 that he was an immigration lawyer.

[44] Although Mr. Musse was an honest witness attempting to recall the events that occurred more than three years earlier, I find his evidence that Mr. Yehia specifically stated that he was an immigration lawyer in November 2004 and April 2005 to be improbable. At that time, Mr. Musse understood that a person had to be

an immigration lawyer to complete the immigration process. Until he learned otherwise from the Law Society, he was unaware that an "immigration consultant" could undertake that work. Being told initially that Mr. Yehia was a lawyer, he would have continued to believe that was the case. However, it is difficult to envisage the circumstances in which Mr. Yehia would have repeatedly assured Mr. Musse that he was a lawyer after he had identified himself as a lawyer during their first conversation.

[45] Mr. Musse is not fluent in the English language. His affidavits do not reflect that fact. For example, phrases such as "during the drive to Mr. Yehia's destination he and I had a conversation wherein he asked me some questions, such as ...." do not sound like statements Mr. Musse would have made.

[46] The Law Society takes the position that the Court should draw an adverse inference from Mr. Yehia's failure to challenge Mr. Musse's assertions that Mr. Yehia represented himself to be a lawyer at the November 2004 and April 2005 meetings during cross-examination. Mr. Olthuis submits that the rule in ***Brown v. Dunne*** (1893), 6 R. 67 (H.L.) required Mr. Yehia to (1) suggest his version of events to Mr. Musse; i.e. that he did not represent himself as a lawyer on those occasions; and (2) allow Mr. Musse to explain or deny that suggestion.

[47] That "rule" is based on the requirement to be fair to witnesses and the parties. A party should not subsequently adduce evidence that casts doubt on the veracity of the witness without giving him or her the opportunity to deal with that evidence. However, the effect of the absence of cross-examination depends upon the

particular facts of a case. In this case, Mr. Yehia deposed in his affidavit filed on January 21, 2008 that "neither by word nor deed did I ever represent to Mr. Musse that I was a lawyer licenced to practice law in British Columbia...." The rule in ***Brown v. Dunne*** is often applied in criminal cases where the Crown does not know the particulars of the defence case and defence counsel may have a duty to put their version of events to the Crown's witnesses. Here, Mr. Musse swore that Mr. Yehia made the representations; Mr. Yehia swore that he did not. Mr. Musse was not deprived of an opportunity to explain his statements. In this case, I do not take an adverse inference from Mr. Yehia's failure to cross-examine Mr. Yehia.

[48] The onus is on the Law Society to prove Mr. Yehia's contemptuous conduct beyond a reasonable doubt. Mr. Musse's bald statements that Mr. Yehia told him he was a lawyer in November 2004 and April 2005 are improbable. If those representations were made in a context that would make them more credible, those facts should have been part of his direct evidence. There was no duty on Mr. Yehia to have Mr. Musse expand on his allegations.

Conclusion:

[49] I do not find the Law Society has met the heavy onus upon it to prove that Mr. Yehia represented to Mr. Musse that he was a lawyer after the Consent Order which was executed on November 4, 2004 and filed on November 9, 2004.

[50] I find that the Law Society has proved beyond a reasonable doubt that Mr. Yehia's failure to make the final $5,000 payment in a timely fashion constitutes contemptuous behaviour. His conduct represents a protracted pattern of wilful

disregard of his obligations under the Consent Order. The fact that he "purged" his contempt by making the final payment shortly before the contempt hearing cannot remedy three and a half years of conduct calculated to disregard an order of this Court and "push the Law Society's buttons". Mr. Yehia's words that he meant no disrespect for the Court and its processes ring hollow.

Punishment:

[51] Rule 56(1) sets out the power of the Court to punish for contempt:

> The power of the Court to punish contempt of court shall be exercised by an order or committal or by imposition of a fine or both.

[52] In ***Law Society of B.C. v. Dempsey,*** 2007 BCSC 442, Mr. Justice Davies considered the factors relevant to the determination of an appropriate punishment for contempt:

- Deterrence, both individual and general;
- The seriousness of the offence;
- The protection of the public;
- The ability to pay a fine; and
- The degree of intention involved in the contemptuous conduct.

[53] In ***Law Society of B.C. v. Hansen,*** 2004 BCSC 825 at para. 108, Rice J. referred to an additional factor of the past record and character of the respondent, including whether the alleged contemnor had committed previous contempts.

[54] I consider it significant that the payments Mr. Yehia were required to make were in the nature of restitution to the victims of his contempt of the 2001 Order. Upon receipt of each payment, the Law Society distributed those payments accordingly. The $5,000 does not represent a fine or a payment to the Law Society itself. By flagrantly refusing to make that payment, Mr. Yehia was harming the very individuals whom he had deceived several years ago.

[55] Had I found Mr. Yehia guilty of representing himself as a lawyer in breach of the Consent Order, I would have no hesitation in imposing a sentence of incarceration. However, I would not impose a jail sentence for his failure to make the $5,000 payment in a timely fashion. Instead, I impose a fine of $1,450. That sum is to be paid to the Law Society within 60 days of today's date. Upon receipt of that payment, the Law Society is to remit those monies to Mr. Musse. I make this unusual type of order on the basis that it mirrors the terms of the 2004 Consent Order which had the effect of providing restitution to the victims of Mr. Yehia's contemptuous conduct and paid fees to a person whom they believed was a practicing lawyer. Mr. Musse is such a victim.

Costs:

[56] This contempt hearing was originally set to proceed on October 31, 2007. After a lengthy application before Master Scarth on October 30, 2007, Mr. Yehia was denied an adjournment pending a cross-examination of Mr. Musse before a court reporter. On October 31, Mr. Yehia advised the Registry that he had checked himself into the emergency unit of a hospital because of a respiratory illness.

Numerous pre-hearing conferences were held for the purpose of setting new dates and hearing applications by Mr. Yehia. After I had ruled that certain paragraphs in the Law Society's material relating to his pre-Consent Order conduct were inadmissible on the issue of his alleged breaches of that Order, he requested in one of his many letters to the Registry, that I "elevate [my] informal ruling ... to the level of a formal ruling" so that he could draft an Order and enter it with the Court. He subsequently brought a motion to enjoin and restrain the Law Society from taking any action with respect to the material that I had previously ruled inadmissible.

[57] Mr. Yehia filed six affidavits in these proceedings. He relied on two affidavits on the contempt proceedings – one dealing with the payment issue and one in response to Mr. Musse's affidavit. He refrained from relying on his other affidavits, in part because he was advised by the Court that he could be cross-examined on any of the affidavits he relied on. He was aware of the Law Society's position that if he relied on material that asserted that he was of good character and denied the matters that were dealt with in the Consent Order, the Law Society would seek to adduce reply or rebuttal evidence.

[58] Mr. Yehia's adamant refusal to satisfy the monetary terms of the Consent Order in a timely fashion is inexcusable. He has prolonged and complicated the litigation of the Law Society's petition, adding unnecessary expense and wasting time.

[59] Special costs are the usual order in a civil contempt proceeding. As Madam Justice Southin stated in ***Everywoman's Health Centre (1988) Victoria Drive Medical Clinic Ltd. v. Bridges*** , (1990), 54 B.C.L.R. (2d) 273 at 297 (C.A.):

> It has long been the practice in the court below to award such costs to a successful applicant. The practice is sound. A person who obtains an order from the court is entitled to have it obeyed without further expense to himself.

[60] Accordingly, the Law Society is entitled to its costs as special costs.

[61] It will not be necessary for Mr. Yehia to approve the form of Order in this matter.

"M.J. Allan J."

The Honourable Madam Justice Allan