IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v. Targosz,* 2010 BCSC 969

Date: 20100121
Docket: S085166
Registry: Vancouver

Between:

The Law Society of British Columbia and The Society of Notaries Public of British Columbia

Petitioners

And

Barbara Bonnar, formerly known as Barbara Targosz, Barbara Marta Courville, Barbara Spizewski, and Barbara Bzymek

Respondent

Before: The Honourable Madam Justice Dardi

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:	B. B. Olthuis
The Respondent:	Appearing on her own behalf
Place and Date of Hearing:	Vancouver, B.C. July 13, August 21, November 9 and 10, 2009, and January 13, 2010
Place and Date of Judgment:	Vancouver, B.C. January 21, 2010

INTRODUCTION

[1] The Law Society of British Columbia (the "Law Society") seeks an order pursuant to s. 85(5) of the *Legal Profession Act*, S.B.C. 1998, c. 9, that the respondent, Ms. Barbara Targosz, be enjoined from contravening ss. 15(1), (4) and (5) of the *Legal Profession Act*.

[2] The Society of the Notaries Public of British Columbia (the "Notaries Society") seeks an order enjoining the respondent from contravening the *Notaries Act*, R.S.B.C. 1996, c. 334, by representing or holding herself out as a notary public or as a member of the Notaries Society.

[3] The petitioners submit that this case engages the public protection mandate of the Law Society and the Notaries Society. The respondent opposes the relief; she contends that the court should not exercise its jurisdiction to grant the relief sought. The essence of her submission is that, because she only charges fees for translation and mediation services, she is not engaged and has not engaged in any unlawful conduct and the injunction sought is not necessary.

[4] I will first outline the background facts, the legislative framework, applicable legal principles, and then address the issues on the merits.

BACKGROUND FACTS NOT IN DISPUTE

[5] The respondent, Barbara Targosz (formerly Courville) resides in Burnaby. She is not, nor has she ever been, a member of the Law Society or the Notaries Society.

[6] The respondent came to Canada from her native Poland in or about 1990. She says she was authorized to practice law in Poland. The respondent applied to the Law Society for enrolment in the Law School Admission Program in April 1998. She attended the Professional Legal Training Course in August 1998 but did not complete the course successfully. As a result, the respondent was prohibited from applying for re-enrolment for a period of two years.

[7] Between April and August 1999, the Law Society conducted an investigation into possible infringements of the *Legal Profession Act* by the respondent. In September 1999, the Law Society wrote to the respondent, enclosing a form of undertaking and covenant concerning the unauthorized practice of law. The respondent executed and returned the undertaking and covenant later that month.

[8] The Law Society and the respondent thereafter engaged in correspondence between March 2000 and August 2001 concerning the respondent's compliance with the undertaking and covenant.

[9] In or about May 2001, the respondent applied to the Law Society for a practitioner of foreign law permit. In early June, she wrote to the Law Society and described her activities as providing “legal consulting regarding the Polish law” and “legal services to clients pertaining to the Polish law”.

[10] The Law Society responded that same month, outlining its concerns that the activities described by the respondent violated s. 15 of the *Legal Profession Act*. The Law Society requested clarification in order to place the respondent's application before the appropriate committee.

[11] The respondent never responded to the Law Society's inquiries and withdrew her application for a practitioner of foreign law permit in February 2002.

[12] She applied for enrolment in the Society of Notaries in or about April 2003, but failed the qualifying examinations. She did not score sufficient marks to qualify for a rewrite.

[13] Pursuant to the *Evidence Act*, R.S.B.C. 1996, c. 124, the Attorney General has appointed the respondent as a commissioner for taking affidavits in British Columbia. The commission is a limited one. It has effect “only in the course of discharge of [the respondent’s] duties as a member of the Polish Congress, Board of Directors”. Further, she “may not administer oaths and take affidavits, declarations and affirmations concerning any cause, proceeding, matter or thing currently before any court in the province”.

ADMISSIBILITY OF AFFIDAVIT EVIDENCE AT THE HEARING

[14] Both parties made extensive submissions during four days of hearings. I have reviewed the 11 affidavits filed by the petitioners and the 14 affidavits filed by the respondent (including the voluminous exhibits).

[15] At this juncture, it is appropriate to address the petitioners' submissions regarding the inadmissibility of portions of the respondent's affidavit material. Both parties provided written submissions in this regard. During the hearing, I indicated I would reserve my ruling on this issue.

[16] I also note that subsequent to the hearing of this matter and while this matter was under reserve, the petitioners requested a further appearance. This was heard before me on January 13, 2009, at which both the petitioners and the respondent submitted further affidavit material. I reserved my ruling on whether I would admit the new affidavit material and I will address this issue later in these reasons for judgment.

Petitioners' position

[17] The petitioners objected to the admissibility of certain portions of the affidavits tendered by the respondent on the basis of:

i. irrelevancy;

ii. constituting improper personal opinion and scandalous comments about the bad character or actions of another;

iii. constituting statements concerning the good character of the respondent; and

iv. on the basis that the admission of certain evidence would contravene the rule against hearsay.

[18] With respect to Mr. Kubera's affidavit #1, which was filed by the respondent, the petitioners point out that it fails to comply with Rule 51(6) of the *Rules of Court*, which provides as follows:

> (6) Where it appears to a person before whom an affidavit is to be made that the deponent does not understand the English language, the affidavit shall be interpreted to the deponent by a competent interpreter who shall certify by endorsement in Form 60 on the affidavit that he or she has interpreted the affidavit to the deponent.

[19] Throughout the affidavit, Mr. Kubera deposes that he requires translation of documents from English to Polish. He also concluded at para. 19 with the statement, "I did this affidavit with the help of my friend who speaks English and Polish well".

[20] Mr. Kubera did not identify this friend, and there is no endorsement as required by Rule 51(6). In short, there is no basis to ascertain whether Mr. Kubera fully understood that to which he was deposing or whether his affidavit fully and accurately records his evidence.

[21] The petitioners argue that because of a lack of guarantee of authenticity of the translation, there is insufficient support for the admission of Mr. Kubera's affidavit #1 and that it should be excluded in its entirety.

Respondent's position

[22] The respondent responds to this last point by pointing out that the affidavit was taken in Poland by a member of the Canadian Embassy.

[23] In response to the balance of the petitioners' arguments on admissibility, she makes broad and general assertions that her affidavit evidence is relevant and therefore admissible.

[24] The respondent also contends that the petitioner's evidence is irrelevant and contains hearsay evidence. She also strenuously argues that Mr. Jaworski is not a certified translator and any evidence tendered which he has translated should be disregarded as unreliable. She argues that, in particular, Mr. Soja's affidavit should be given no weight because it was translated by Mr. Jaworski and Mr. Soja did not understand its contents.

[25] On November 9 and 10, 2009, Mr. Soja attended the court hearing. The Court invited the respondent to obtain an affidavit from Mr. Soja to explain any

inaccuracies with respect to the translation of the prior affidavit evidence. She did not do so.

[26] Although she applied on November 9, 2009 to cross-examine Mr. Soja, the respondent ultimately abandoned her application because she asserted there was no qualified translator available.

Discussion

[27] Although I have concerns as to the admissibility of Mr. Kubera's affidavit because of its non-compliance with Rule 51(6), I am admitting his affidavit pursuant to Rule 51(11).

[28] With respect to the balance of the petitioners' objections, I have doubts as to the admissibility of much of the affidavit material upon which the respondent relies.

[29] For instance, Mr. Kubera, Ms. Kwiatkowski-Szreder, Ms. McLaughlin and Ms. Gasparin comment on the respondent's honesty and good reputation and that she helps people without any form of payment.

[30] Ms. Kwiatkowski-Szreder attacks the credibility of Mr. Soja, who is a deponent for the petitioner. Ms. Kruszynska's affidavit deals in its entirety with allegations against Mr. Jaworski, who translated Mr. Soja's affidavit.

[31] Ms. Gomolka's affidavit deals with certain alleged events involving the respondent and Mr. Wazny, the husband of the petitioners' affiant, Ms. Burda. Notably, Ms. Gomolka does not allege that Ms. Burda was present or privy to any of the events to which Ms. Gomolka deposes.

[32] Although I have doubts as to the relevancy and the admissibility of much of the respondent's affidavit evidence, in the unique circumstances of this case, I have considered all of the respondent's and the petitioners' evidence in rendering my decision.

[33] With respect to the respondent's objections to the petitioners' evidence, I am not ruling Mr. Soja's affidavit inadmissible in the absence of the respondent tendering any evidence showing that Mr. Soja's affidavit was not properly translated. I have not considered any hearsay evidence tendered for the truth of its contents.

ISSUES

[34] The issues on this application may be summarized as follows:

i. Has the Law Society established that there is reason to believe that the respondent has or will contravene ss. 15(1), (4) and (5) of the *Legal Profession Act* or Law Society Rules?

ii. Has the Notaries Society made out a case for an injunction restraining the respondent from acting or holding herself out as authorized to act as a notary public?

I will deal with each issue in turn.

The Law Society

Relevant Statutory Provisions

[35] The Law Society is statutorily charged with the "object and duty … to uphold and protect the public interest in the administration of justice".

[36] Section 15(1) of the *Legal Profession Act* provides that, with certain exceptions, no person other than a practicing lawyer is permitted to engage in the practice of law. The term "practicing lawyer", by virtue of the definitions in s. 1(1), means a member in good standing of the Law Society who holds or is entitled to hold a practicing certificate.

[37] The definition of "practice of law" in s. 1(1) includes any of the following activities if performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed:

> (a) appearing as counsel or advocate,

> (b) drawing, revising or settling
>
> > (i) a petition, memorandum, notice of articles or articles under the *Business Corporations 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)[.]

[38] Section 15(4) of the *Legal Profession Act* prohibits any person from falsely representing himself or herself as being a lawyer, articled student or practitioner of foreign law. Section 15(5) then provides that except as permitted by s. 15(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 person".

[39] Section 85(5) of the *Legal Profession Act* gives the Law Society authority to apply for an injunction restraining a person from contravening the *Act*. Section 85(6) states:

> (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.

ANALYSIS

The test for relief sought

[40] With respect to the relief sought by the Law Society, the statutory test is prescribed by s. 85(6) of the *Legal Profession Act*. In *Law Society of British Columbia v. Grimwood* (24 February 2005), Vancouver L032736 (S.C.) at para. 9, Stewart J., after citing that section, observed:

> Note how little the Law Society need establish to obtain an injunction ordering someone not to do that which they are not permitted to do as a matter of law, in any event.

[41] The Law Society need only establish that there is "reason to believe" that there has been or will be a contravention of the *Legal Profession Act*. The court must have reasonable grounds for such a belief. This must be assessed objectively and must be supported by the evidence. It requires more than mere suspicion but less than proof on a balance of probabilities: *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.

[42] The threshold for making out a case for an injunction is thus a low one. As the Court observed in *Grimwood*: the injunction merely operates to prohibit breaches of the statute, which is impermissible conduct in any event. Regarding the latter, s. 3 of the *Legal Profession Act* stipulates that the Law Society's paramount object and duty is to uphold and protect the public interest in the administration of justice and, in so doing, to regulate the practice of law.

[43] The form of consideration required to constitute the "practice of law" according to the *Legal Profession Act*, has been broadly interpreted by the courts as the receipt of fees or another type of benefit "such as promise of future business, gifts or favours": *Law Society of British Columbia v. McLaughlin*, [1992] 70 B.C.L.R. (2d) 235 (S.C.) [*McLaughlin*].

[44] At the hearing, the respondent abandoned her challenge to the *Legal Profession Act* on the basis of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, (U.K.),

1982, c. 11. In any case, she would not be entitled to seek a constitutional remedy as she did not comply with the notice requirements of the *Constitutional Questions Act*, R.S.B.C. 1996, c. 68.

[45] The respondent nonetheless submitted that "*Charter* values" must inform the interpretation of the *Legal Profession Act*.

[46] The Supreme Court of Canada in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, clearly stated that where a statute was unambiguous, the court must give effect to the clearly expressed legislative intent; a "*Charter* values" interpretive principle can only be applied in circumstances of genuine ambiguity. No such ambiguity was demonstrated with respect to the *Legal Profession Act*.

The conflicts in the evidence

[47] Neither party applied to cross-examine the other party's deponents despite Wong J.'s order on March 25, 2008 setting out a schedule for any applications for cross-examinations on affidavits, with the following exception: the respondent's application to cross-examine Mr. Soja referred to earlier.

[48] I permitted the respondent in her oral submission to make full argument in respect of all of the affidavit evidence tendered. For the most part, the respondent does not dispute that she performed the services as alleged by the petitioners. The central point of dispute is whether she did so "in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts were performed".

[49] The petitioners submit that because of the wording of s. 85(6), the Court can engage in a limited assessment of the plausibility of the contested facts to determine whether there is reason to believe that there has been or will be a contravention of the *Legal Profession Act*.

[50] I conclude it is not necessary for me to decide the issue because I find for the reasons set out below that the uncontradicted evidence is sufficient to support the granting of the injunction sought by the Law Society.

Application of the facts – s. 15(1)

i. Wieslawa Maria Urbanczyk

[51] The respondent provides a broad denial that she provided legal services to Ms. Urbanczyk, but does not contest the material portions of Ms. Urbanczyk's evidence that relate to the practice of law, as that phrase is defined in the context of the *Legal Profession Act*.

[52] The respondent's evidence supports Ms. Urbanczyk's evidence on the material points. For instance, the respondent confirms that she and Ms. Urbanczyk had dealings of the nature Ms. Urbanczyk describes, and she concedes that she told Ms. Urbanczyk that she was employed as a student-at-law in a law office. This is consistent with Ms. Urbanczyk's evidence that the respondent said "she was in the process of becoming a fully qualified lawyer in British Columbia". With respect to the nature of the services rendered by the respondent, Ms. Urbanczyk's uncontradicted evidence established that she first contacted the respondent in 1998 seeking assistance in obtaining a divorce.

[53] The respondent ultimately advised Ms. Urbanczyk on the most expeditious way to obtain a divorce and offered to prepare—and did prepare—a separation agreement, writ of summons and statement of claim. These documents and others prepared by the respondent were filed in court.

[54] Again the respondent does not expressly contest this evidence. On the contrary, in 2004, she swore an affidavit for proceedings in Florida in which she deposed to having prepared the file separation agreement and to having made errors in doing so.

[55] The respondent appears to offer two substantive arguments in response to Ms. Urbanczyk's evidence.

[56] First, the respondent suggests that she was acting at all times at Ms. Urbanczyk's urging. This does not, however, take the respondent's conduct outside the prohibitions in the *Legal Profession Act*. Even where a person provides

an express “caveat” that he or she is not a lawyer or is not providing “legal advice”, this cannot alter the true nature of the services provided: *Law Society of British Columbia v. Burney* (1996), 18 B.C.L.R. (3d) 327 (S.C.). The respondent does not depose that she made such a representation. In any case, whether or not Ms. Urbanczyk instructed the respondent to engage in the practice of law is of no moment.

[57] Secondly, the respondent denies that any advice she provided Ms. Urbanczyk amounted to “legal advice”:

> Ms. Urbanczyk did not see any difference between given information with regards to the legal procedure and legal advice. I did not give any legal advice to the matter of law operation, only where she had to file divorce and what form she had to provide to court.

[58] This argument takes aim at para. (e) of the statutory definition of “giving legal advice”, and implies there is a distinction between giving procedural and substantive advice.

[59] The *Legal Profession Act* does not include any definition of the phrase “legal advice”. It is clear, however, that the statute does not distinguish between advice on matters of procedure and matters of substance. Even if, from a practical perspective, such a distinction were tenable, the *Act* captures both “types” of advice and prohibits these activities for unlicensed persons.

[60] In *Law Society of British Columbia v. Gravelle* (1998), 57 B.C.L.R. (3d) 388 (S.C.) [*Gravelle*], the respondent acknowledged the prohibition on providing legal advice but advanced this proposition:

> I can tell her how the process works. But that's not a legal opinion or legal advice; that's just how the process works, and she could find that out on her own.

[61] The Court in *Gravelle* rejected that argument and concluded beyond a reasonable doubt that looking at the totality of the conduct of Ms. Gravelle she had given legal advice.

[62] No other portion of the statutory definition of "practice of law" can be said to draw a distinction between procedure and substance. In fact, some aspects of the definition, for example drawing, revising or settling the various documents set out in subparagraph (b), arguably are more "procedural" than "substantive" in character, particularly in light of the jurisprudence in *McLaughlin*, which states: "'filling in the blanks' for gain of any sort is practising law for it is drawing, preparing or settling documents" (at para. 14).

[63] By way of an analogy, it is notable that solicitor-client privilege, which attaches to communications that are for the purpose of seeking or giving legal advice, also fails to recognize such a distinction. Communications between client and counsel are protected, irrespective of whether they relate to "procedure" or "substance". The Court in *Reid v. British Columbia (Egg Marketing Board)*, 2006 BCSC 346, states at para. 12:

> However, the protection of solicitor-client privilege is not restricted to legal advice relating to interpretations of the law; it also protects advice as to the appropriate conduct to take in a given legal context.

[64] The respondent acknowledges that she advised Ms. Urbanczyk at least as to procedural matters in the family law realm.

[65] Regarding remuneration, Ms. Urbanczyk deposes that she paid the respondent $500 in cash for the respondent's services. The respondent does not expressly deny that she received and accepted $500 for her services. Rather, she states: "I paid for [filing] her documents and she remitted me the amount around $300 after when I provided to her the invoice of payment from the Court registry". The respondent does not provide any receipts or documentation to support a claim for simple reimbursement.

[66] In summary, I have reason to believe that with respect to Ms. Urbanczyk, the respondent provided legal advice within the meaning of the statutory definition of "practice of law", as she engaged in conduct within subparagraph (b)(ii) of that definition: drawing, revising or settling a document for use in a proceeding judicial or extrajudicial.

[67] I am satisfied there is reason to believe she did so in the expectation of the fee, gain or reward direct or indirect from Ms. Urbanczyk.

ii. Mr. Soja

[68] Mr. Soja deposed that he saw the respondent's advertisement in a Polish-language newspaper. He contacted her seeking assistance in obtaining a divorce.

[69] Mr. Soja deposes at his first meeting with the respondent at a residence in Burnaby, she identified herself as a lawyer, notary and court translator and that she advised him regarding the commencement of proceedings. Mr. Soja says that the respondent:

> [R]ecommended I start divorce proceedings in Nanaimo registry. She said this would be best because she was known in Vancouver and New Westminster courts and would have trouble there.

[70] The respondent disputes this and says she told Mr. Soja “that he could file the divorce in Vancouver [and] that it would be much easier for him instead to go at any hearing there”.

[71] Mr. Soja in fact commenced proceedings in Nanaimo. He also deposes that the respondent assisted him on an ongoing basis “with choices to be made in the divorce proceedings and advised me on the law concerning divorce and the division of family assets”.

[72] The respondent makes a blanket denial of all allegations in Mr. Soja’s affidavit. However, she concedes that she advised Mr. Soja about legal procedure and that she filled out “his divorce form” for him. She also deposes that she “helped in some documents that he insisted to type” in connection with court proceedings.

[73] It is uncontroverted that at least on one occasion, on September 26, 2002, the respondent attended court with Mr. Soja. On another occasion, the transcript records the respondent as requesting that she “be only interpreter today but assist Mr. Soja to present his case today”. By way of further explanation, the respondent told the Court:

> I know legal process. I have a law degree, Canadian law degree, and I am not a practicing lawyer here. I am Polish lawyer, estate Polish lawyer, and former judge of the Supreme Court of Poland and a mediator[.]

[74] The respondent informed the Court to that she was not receiving any remuneration from Mr. Soja. Mr. Soja says that he paid the respondent between $5,000 and $6,000 in total for services relating to his divorce. He says the respondent always insisted on cash and that she never provided any receipts.

[75] On the other hand, the respondent claims to have done a great deal of work and translation for Mr. Soja and to have received no remuneration for those efforts or reimbursement for her out-of-pocket expenses.

[76] Mr. Soja retained a copy of a bill for $1,550 that the respondent gave to him, which according to the translation, sets out an amount of an old debt and then sets out her fees for “new papers to be prepared for discovery and the trial as well as the new translation”. The bill states that the respondent was providing other “consultations” free of charge. The bill also sets out what appear to be instructions regarding the prosecution of the family law proceedings.

[77] The respondent admits she expected to be paid for her translation services. On the basis of the uncontroverted evidence, I have reason to believe the respondent expected a fee, gain or reward, direct or indirect, from Mr. Soja, including the promise of future translation work.

[78] It is not necessary for the purpose of this ruling to make any findings with respect to the other financial dealings between the respondent and Mr. Soja and I decline to do so.

[79] In summary, I am satisfied there is reason to believe that the respondent did the following for Mr. Soja in return for a fee, gain or reward: appeared as advocate on his behalf; drew, revised or settled documents for use in his judicial proceedings and/or relating to a proceeding under a statute of Canada or British Columbia; and, gave legal advice to him.

iii. Rozalia Burda

[80] On March 31, 2009, Ms. Burda deposed that she attended with her husband at the respondent's Burnaby apartment.

[81] Ms. Burda deposed that the respondent reviewed the marriage agreement between Ms. Burda and her husband and expressed her opinion as to its substance. The respondent indicated she would prepare a new marriage agreement. The respondent also asked who would pay for the new agreement, and Ms. Burda's husband indicated he would.

[82] The respondent prepared a new marriage agreement which she faxed to Ms. Burda.

[83] The respondent's evidence is to the effect that Ms. Burda's husband saw the respondent's advertisement and sought her help as a mediator in a family matter. The respondent deposes that she told Ms. Burda's husband that she was not a lawyer.

[84] The respondent appears to state that she convened a mediation session with Ms. Burda and her husband, and that both parties understood the respondent was acting as a mediator.

[85] The respondent concedes that she expected to be paid for her service as a mediator. She also appeared to concede that she drafted the new marriage agreement, although she says that she made notations on it (which were not included in Ms. Burda's affidavit) to the effect that the document was in draft form and required discussion with a lawyer.

[86] As referred to earlier, it is irrelevant whether the respondent advised the parties to seek legal advice. It is no answer for the respondent to assert she disclosed that she is not a lawyer and that she could not give legal advice or that she made a disclaimer for whatever advice or service was given: *Law Society of British Columbia v. Hanson*, 2004 BCSC 825 at para. 13.

[87] The thrust of the respondent's submission is that she can be retained and paid as a mediator and that she can perform legal services on the side as long as she only charges for her mediation services.

[88] The record does not show that she expected to be paid only for the time she mediated. There were no invoices submitted that show how she charges as a mediator. Even if her invoices showed that she only billed her hourly rates for the time she mediated, I have reason to believe that the legal services she performed were nonetheless performed in the expectation of a gain or reward. The respondent intends to earn a living as a mediator, and to the extent she provides “full” services to her clients, it can reasonably be inferred that in return she expects to increase the likelihood of mediation retainers.

[89] I have reason to believe that, in return for or in the expectation of a fee, gain or reward, direct or indirect, the respondent has drawn, revised or settled a document and gave legal advice to the Burdas pursuant to subsections (b) and (e) of the definition of “practice of law” in the *Legal Profession Act*.

iv. Mr. Kucharuk

[90] In June 2001, when the respondent was employed by Paul Winn Law Corporation, she appeared before the late Prothonotary Hargrave in Federal Court representing Mr. Kucharuk as a trustee in bankruptcy on a motion relating to certain Polish ships. The Court issued an order stating, *inter alia*:

> Short leave granted. No one objecting. Ms. Barbara Courville of the Polish Bar Association, working as a foreign legal consultant as to Polish law and senior legal assistant in the Paul Winn Law Corporation, allowed to speak to the motion and to her own affidavit.

[91] The respondent states that she only appeared in Federal Court as a legal assistant and only at the request of Mr. Winn. The respondent refers to and relies on her letter of August 16, 2001, and the Law Society's response of August 27, 2001.

[92] The respondent’s August 2001 letter states, among other things, that:

a) the respondent “tried to explain” to the prothonotary that she “could assist the Court in the nature of being an expert on issues of Polish law”;

b) she never described herself as counsel; and

c) she “answered a number of questions … on the issues of operation of Polish law and the facts set out in my Affidavit”.

[93] The letter also admits that the respondent did use “unfortunate” language in describing herself in the affidavit that was before the Court on the motion. In the respondent’s own words, that affidavit “might lead someone to conclude that I have a permit from the Law Society of British Columbia as a Practitioner of Foreign Law”.

[94] The Law Society ultimately did not take any further action regarding this matter, as the respondent indicated she was acting under Mr. Winn's supervision.

[95] The respondent grounds her submission on the fact that she was employed in the law office as a senior legal assistant. However, s. 15(2) requires employment and supervision; any other interpretation would be tautological. There is no basis on the record to find that Mr. Winn was actually supervising the respondent. I note that Mr. Winn has since resigned as a member of the Law Society in the face of disciplinary proceedings.

[96] Finally, I address the respondent’s submission that the petitioners could not impugn her for appearing in Federal Court. She relies on *Law Society of British Columbia v. Mangat*, 2001 SCC 67 [*Mangat*], for this submission. The *Federal Court Rules*, S.O.R./98-106, require those appearing as being called to the Bar in the province in which they appear. Unlike the provisions of the *Immigration Act*, R.S.C. 1985, c. I-2, considered in *Mangat*, the *Federal Court Rules* do not permit non-lawyers to appear in court for a fee.

[97] In summary, I have reason to believe that in expectation of a fee, gain or reward, direct or indirect, the respondent acted outside her authority and without

supervision in acting as an advocate in Federal Court in contravention of the *Legal Profession Act*.

Conclusions on s. 15(1)

[98] On the uncontroverted evidence, I have reason to believe that the respondent has engaged in the "practice of law" as defined in s. 1 of the *Legal Profession Act* and I have reason to believe that those acts were performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person or persons for whom they were performed. The fact that the respondent's appearances were authorized by the court does not alter my conclusion.

[99] In the result, I am satisfied there is reason to believe that the respondent has or will contravene s. 15(1) of the *Legal Profession Act*. Accordingly, I grant the order sought by the Law Society set out in para. 1 of the draft order.

Providing advice with respect to Polish law

[100] At this juncture, it is appropriate to address the issue of the respondent providing legal advice with respect to the laws of Poland.

[101] Prior to her June 2001 appearance in Federal Court and on subsequent occasions, the Law Society advised the respondent:

> We caution you against providing any legal services in British Columbia even if the services relate to Polish matters. The *Legal Profession Act* does not distinguish between practicing British Columbia law or that of another jurisdiction. Accordingly, in order to practice law in British Columbia, you either have to be a member of the British Columbia Bar or registered as a Practitioner of Foreign Law or fall within some of the other exceptions.

[102] The Law Society submits that this is the correct interpretation of the *Legal Profession Act*. There are aspects of the statutory definition of "practice of law" that are limited to the laws of Canada or British Columbia (for example, subsection (b)(4)). The phrase "giving legal advice", on the other hand, is general and broad. In its grammatical and ordinary sense, the phrase captures advice pertaining to foreign law provided that was rendered in British Columbia.

[103] This interpretation also accords with the scheme and purpose of the *Legal Profession Act*. The predominant aim of the *Act* is to provide protection for the general public in the provision of legal services.

[104] I accept the petitioners' submission that members of immigrant communities, who may have familial and/or property ties to their homelands, may be vulnerable to those persons in B.C. who profess expertise in the law of their homelands. The legislature has a valid interest in protecting such residents.

[105] Section 17 of the *Legal Profession Act* further supports an interpretation of "legal advice" that captures the giving of legal advice on foreign law. It provides that the benchers of the Law Society may "permit a person holding professional legal qualifications obtained in a country other than Canada to practice law" and to "attach conditions or limitations" to the same.

[106] Although subordinate legislation cannot affect the interpretation of its empowering legislation, it is nevertheless instructive that the rules adopted by the Benchers provide that a certified practitioner of foreign law "may provide legal services in British Columbia respecting (a) the law of the jurisdiction in which the practitioner of foreign law is fully licensed to practice law, and (b) trans-jurisdictional or international legal transactions". In other words, a certified practitioner of foreign law can only do the things the respondent seems to suggest she can already do as "an expert on issues of Polish law".

[107] If "legal advice" has the meaning the respondent appears to give to it, there would be no reason to seek certification as a practitioner of foreign law and the legislative purpose would be frustrated.

[108] In summary, the Law Society has jurisdiction over persons practicing law in British Columbia, even if the law is foreign. The *Legal Profession Act* and the Law Society Rules prescribe when practitioners of foreign law are authorized to practice law in B.C. This clearly falls within their public protection mandate for ensuring the

competency of those providing legal services relating to other countries: *Law Society of B.C. v. Dempsey*, 2005 BCSC 1277 [*Dempsey*].

[109] The respondent is not now nor has she ever been a practicing lawyer or a practitioner of foreign law as defined in the *Legal Profession Act*. The respondent cannot provide advice as to Polish law for compensation while in British Columbia, unless she otherwise complies with the *Legal Profession Act*.

Section 15(4) of the *Legal Profession Act*

[110] Section 15(4) of the *Legal Profession Act* prohibits persons from falsely representing themselves as being a lawyer, articling student or practitioner of foreign law.

[111] I have reason to believe the respondent has placed advertisements in the Polish language 2008 BC Polish Directory that state or could lead one to believe that she is qualified to provide legal services in B.C. and that she is qualified as a practitioner of foreign law. These advertisements were clearly for a business purpose, and it is a reasonable inference that the respondent expected a fee, gain or reward to result from the same.

[112] It is not necessary for the purposes of this application to make any findings as to the disputed translations of these advertisements. However, it is noteworthy that a number of the affiants for the petitioners depose that the respondent's advertisements played a role in their dealings with her. In my view, the advertisements engaged the Law Society's public protection mandate.

[113] I have also considered the respondent’s appearance in Federal Court.

[114] On the totality of the uncontradicted evidence, I am satisfied that there is a reason to believe that the respondent has or will contravene s. 15(4), and I grant the relief sought by the Law Society in para. 2 of the draft order.

Section 15(5) of the *Legal Profession Act*

[115] Section 15(5) of the *Legal Profession Act* states:

> (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 person.

[116] There is conflicting authority concerning the purpose and effect of s. 15(5) and, in particular, as to whether its prohibition extends to situations in which a person acts as agent for another where the person acting is doing so voluntarily.

[117] In *Dempsey*, Williams J. held that s. 15(5) should be interpreted narrowly, such that it does not involve situations in which a person acts on another's behalf. Subsequently, however, in *Law Society of British Columbia v. Bryfogle*, 2006 BCSC 1092, Groberman J. (as he then was) held at para. 44 as follows:

> [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. [Emphasis added.]

[118] I prefer the analysis of this issue in *Bryfogle*. I accept the petitioners' submission that for the purposes of s. 15(5) the matter of receipt or expectation of a fee, benefit or reward is irrelevant.

[119] The Law Society submits that there is reason to believe that the respondent has or will contravene s. 15(5). They rely on the affidavit evidence of Mr. Kubera, which was tendered by the respondent and the evidence of the respondent herself.

[120] On her own admission, in 2005, the respondent sent to Mr. Kubera (who was involved in a family law dispute) in Poland translated forms of a statement of defence and counterclaim. She translated his response and filed the statement of defence and counterclaim in the Vancouver Registry on November 22, 2005.

[121] In the notice of intention filed on December 12, 2005, in reference to the respondent, Mr. Kubera states: "I authorize her to sign documents on my behalf that

it will be presented to Court" and "I am asking to allow her to represent me in this action".

[122] In the respondent's affidavit filed on December 12, 2005, in Mr. Kubera's proceeding, she stated that Mr. Kubera asked her "for help and represent him in the Supreme Court of B.C. in the family matter. He authorized me to represent himself in his family matter". The short leave requisition dated December 12, 2005 was signed by the respondent.

[123] In e-mail correspondence in January 2006 between the respondent and Ms. Kubera's counsel, the respondent states "I informed Mr. Kubera" about the order.

[124] Based on the Court's analysis of s. 15(5) in *Bryfogle* with respect to Mr. Kubera, I have reason to believe that the respondent has commenced, prosecuted or defended a proceeding in court.

[125] In the result, I am satisfied there is reason to believe that the respondent has or will contravene s. 15(5), and I grant the relief sought in para. 4 of the draft order.

RELIEF SOUGHT BY THE NOTARIES SOCIETY

[126] Section 16(1) of the *Notaries Act* states that a person who is a member of the Notaries Society "may use the style and title of Notary Public in and for the Province of British Columbia and is a notary public".

[127] Subject to the exceptions in s. 17(2), s. 17(1) states:

> 17 (1) A person acts as a notary public if the person, for or in expectation of a fee, gain or reward, direct or indirect,
>
> (a) draws, prepares, issues or revises a document that is intended, permitted or required to be registered, recorded or filed in a registry or other public office or that is a will or testamentary instrument, or
>
> (b) holds himself or herself out as qualified to draw, prepare, issue or revise a document referred to in paragraph (a).

[128] Under s. 48(1) of the *Notaries Act*, no person can act, or hold herself out as authorized to act, as a notary public without being authorized to do so under the *Act*.

A contravention of s. 48 constitutes an offence, punishable by a fine of not more than $2,000.

[129] The *Notaries Act* does not contain any express equivalent to subsection 85(5) of the *Legal Profession Act*. The Notaries Society, nonetheless, has standing to seek injunctive relief to restrain the respondent from contravening the statutory prohibition from holding herself out as a notary: s. 4 of the *Attorney General Act*, R.S.B.C. 1996, c. 22; and *British Columbia Assoc. of Optometrists v. Clearbrook Optical*, 2000 BCCA 296.

[130] Although this issue was not argued, it is not clear that the relief sought by the *Notaries Act* for a final order is properly brought by petition.

[131] However, it is not necessary for me to decide this issue because I conclude for the reasons that follow, pursuant to s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, and the inherent jurisdiction of the court (see *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, [1996] 2 S.C.R. 495), it is just and convenient that an interim injunction be issued restraining the respondent from holding herself out as a notary.

[132] The injunction sought is to restrain the respondent from holding herself out as a notary. The petitioners submit that the injunction is properly characterized as "*quia timet*" or "because he fears or apprehends". The injunction sought is an extraordinary remedy and should be approached cautiously.

[133] The granting of an interim injunction is discretionary. In *TELUS Communications Co. v. Rogers Communications Inc.*, 2009 BCCA 581 at para. 27, the Court of Appeal reiterated the test as follows:

> [27] The chambers judge applied the usual test for an interlocutory injunction, citing the judgments of this Court in *British Columbia (A.G.) v. Wale* (1986), 9 B.C.L.R. (2d) 333, aff'd [1991] 1 S.C.R. 62, and in *Bell Mobility Inc. v. Telus Communications Co*., 2006 BCCA 578, as well as the judgment of the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (A.G.)*, [1994] 1 S.C.R. 311. He described the test in these terms:

> [21] The first prong is whether the applicant's claim raises a fair question to be tried. The cases make it clear that this is a relatively low threshold.
>
> [22] The second prong is whether the balance of convenience favours the granting of the injunction. One of the factors to be considered in this regard is whether either of the parties will suffer irreparable harm from allowing or denying the application. In the three-pronged test, irreparable harm is considered separately from the balance of convenience, but in either event we are warned to view the picture as a whole, rather than concentrate on its individual components.
>
> [23] Other factors include, but are not limited to, which of the parties has acted to alter the balance of the relationship so as to affect the status quo, and matters affecting the public interest. Also to be considered in assessing the balance of convenience is the strength of the applicant's case, particularly where the extent of incompensable disadvantage to each party would not differ significantly....

[134] In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, the Court stated that the low threshold of the initial inquiry meant that an extensive examination of the merits of the applicant's claim was neither necessary nor desirable. However, the Court considered that a rigid application of this rule may not do justice in every instance. For example, when the result of an interlocutory motion will in effect amount to a final determination of the matter then a court may engage in a more extensive examination of the merits.

[135] This case may well be within the scope of this exception. As a matter of justice, the onus is on the Notaries Society to show a strong *prima facie* case.

Has the Notaries Society established a strong *prima facie* case?

[136] The Notaries Society relies on the following evidence:

i. The respondent's name was included for some time prior to June 2008 on a website of the Polish Consulate that purported to identify lawyers and notaries public in Western Canada. The respondent contends that she has no knowledge of the website. However, the petitioners submit that it can be reasonably inferred that she had some involvement with that listing.

ii. Ms. Kubera's affidavit annexes as Exhibit K an affidavit commissioned by the respondent in November 2005, which the petitioners submit is evidence that the respondent is holding herself out as a notary, as this is clearly outside the terms of her limited commission.

[137] At this juncture, it is appropriate to address the petitioners' affidavit material that was submitted following the hearing of this matter. Counsel for the petitioners has characterized this material as centrally relevant to the issues to be determined by the court.

[138] Prior to delivering reasons for judgment, this court has a broad and unfettered discretion to reopen a hearing. However, this power must be exercised cautiously and with great care so as to prevent an abuse of process: *G.C.H. v. H.E.H.*, 2009 BCSC 4.

[139] In the circumstances of this case, I am persuaded it would be a miscarriage of justice not to admit the further affidavit evidence. I have considered that the respondent had a full opportunity to respond to the material submitted by the petitioners, and indeed filed three further affidavits in response. I also refer to Rule 10(8) in this respect.

[140] In the result, I admit the petitioners' and the respondent's further affidavits.

[141] In early December 2009, after the argument in this case had been completed, one of the affiants for the petitioners, Mr. Soja, requested the return of certain documents. Staff counsel at the Law Society, Ms. Wiseman, personally conducted a review of the Law Society file (not counsel's file) and located the document written in the Polish language and bearing a notarial seal (the "Impugned Document"). Counsel for the petitioners has sworn an affidavit that over the seal was an embossed stamp visible only on the original which said "Barbara Targosz", "Notary Public" and "British Columbia".

[142] The petitioners' counsel arranged for the original of the Impugned Document to be attached to Ms. Wiseman's affidavit and wrote to the respondent on

December 15, 2009, stating their view that the Impugned Document is “centrally relevant”. Counsel also proposed to deliver the original sworn affidavit to my chambers along with a cover letter stating that, although they did not intend to make further submissions, they recognized the respondent should have the opportunity to address the Impugned Document. After counsel’s correspondence was faxed to the respondent, the original of the affidavit was delivered to the respondent's address inadvertently.

[143] The receptionist at the petitioners’ counsel’s office has deposed that she made one copy of the Wiseman affidavit and personally sealed the envelope containing the original. She was also in attendance when the courier arrived to deliver this sealed envelope to the respondent’s address.

[144] When the petitioners’ counsel realized the error on December 17, they contacted the respondent, who agreed to return the original Wiseman affidavit. The petitioners’ counsel arranged a courier to attend at the respondent’s address, pick up the package and return it to the petitioners’ counsel’s office. After some delay, the courier obtained the package from the respondent. The courier delivered a sealed envelope to the reception at petitioners’ counsel’s office that afternoon.

[145] Mr. Rankin, one of the counsel for the petitioners, has deposed that the last page of the affidavit, being the exhibit, was not the same page that was attached to the original Wiseman affidavit.

[146] The respondent admits receiving the original affidavit but denies that the original exhibit was attached, as is alleged by the petitioners. The petitioners submit that this cannot be the case since only one copy of the affidavit was made and it remained on the file in the petitioners’ counsel’s office.

[147] In her affidavit filed in response, the respondent denies signing or stamping the Impugned Document and denies that such a document ever existed. However, she does not deny owning the notarial seal, which was described by the petitioners’ deponents.

[148] While I make no finding on the conflicting affidavit evidence, I am satisfied that the Notaries Society has made out a strong *prima facie* case that the respondent has represented herself or held herself out as a notary public in British Columbia or that she will do so.

[149] Addressing the second prong of the test, the balance of convenience of which irreparable harm is a constituent factor, I conclude that the interest of protecting the public outweighs any hardship an injunction would impose on the respondent. As observed by Robert J. Sharpe in *Injunctions and Specific Performance*, looseleaf (Aurora, Ont: Canada Law Book, 1992) at 3.150, “the court will rarely conclude that the public interest in having the law obeyed is outweighed by the hardship an injunction would impose upon the defendant”.

[150] In any case, I observe that the order will only restrain the respondent from doing what she is not permitted to do as a matter of law.

[151] In the unique circumstances of this case, pursuant to Rule 45, the Notaries Society is not required to give any undertaking as to damages.

[152] In the result, I am ordering an interim injunction that the respondent be enjoined from representing or otherwise holding herself out as a notary public, practicing or non-practicing, or as a member of the Society of Notaries Public of B.C.

[153] With respect to the relief sought by the Notaries Society, either party has liberty to apply pursuant to Rule 52(11)(d).

APPLICATION TO AMEND STYLE OF CAUSE

[154] The petitioners became aware after argument concluded on the petition that the respondent had changed her surname. She is now known as Barbara Bonnar. The petitioners wish to amend the style of cause to refer to her new name as well as her former names. They submit that this change will further the petitioners’ public protection mandate by allowing greater publicity of the identity of the person to whom these proceedings relate.

[155] The respondent opposes the relief except as it relates to the name “Bonnar”. She has sworn an affidavit attaching the certificate of marriage that shows that she was married to John Edmond Bonnar on November 14, 2009. She states she has two passports, Polish and Canadian, both with the surname Targosz, but she currently uses the name Bonnar. She has signed her affidavits as Barbara Targosz. In the course of the hearing, she was unable to demonstrate any prejudice if the amendment was granted.

[156] In the result, I grant the amendment to the style of cause in the terms sought by the petitioners.

CONCLUSION

[157] I have determined that in all the circumstances, it is appropriate to issue the injunction sought by the Law Society. I am satisfied that there is reason to believe that the respondent has or will contravene the provisions of the *Legal Profession Act*. Accordingly, I grant the injunction in the terms sought by the petitioners in paras. 1, 2 and 4 of the draft order.

[158] I am bound to follow *Dempsey* with respect to the terms sought in para. 5, and I therefore decline to order the terms sought in para. 5 of the draft order.

[159] I grant para. 6 as a term of the order with the following words added: “except where she is an individual party acting without counsel and solely on her own behalf”.

[160] I also grant the injunction sought by the Notaries Society on the terms I have referred to earlier.

COSTS

[161] The petitioners are seeking special costs primarily based on the circumstances surrounding the Impugned Document. Given the conflicting affidavit evidence on this point, at the hearing on January 13, I indicated that after the

delivery of my reasons for judgment the parties would be at liberty to schedule an application to speak to special costs.

[162] If the petitioners wish to pursue special costs, they are granted leave to schedule a hearing before me. Otherwise, the petitioners are entitled to costs at Scale B.

[163] Ms. Targosz, the petitioners have requested that I dispense with the form of approval of the order. Do you have any submissions on that?

[164] MS. TARGOSZ: No.

[165] THE COURT: I am dispensing with the form of approval of the form of this order, but it will be directed to my attention for review and signature.

[166] Is there anything arising?

[167] MR. OLTHUIS: I don't think so, My Lady.

[168] THE COURT: Ms. Targosz?

"Dardi J."