

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20101102
Docket: L052123
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And

**Auguste Christiane Frederich Von Pfahlenburg-Marienburg
also known as Christiane Von Pfahlenburg
also known as Walther Kay Diener and
Argento Metals Compagnie Ltd., also known as A.M. CIE Ltd.**

Respondents

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

Counsel for the Petitioner:

E.B. Lyall

The Respondent, Von Pfahlenburg, In Person:

A. Von Pfahlenburg

Place and Date of Trial/Hearing:

Vancouver, B.C.
October 14, 2010

Place and Date of Judgment:

Vancouver, B.C.
November 2, 2010

[1] **THE COURT:** The petitioner, The Law Society of British Columbia (the "Law Society"), applies in this action for an order that the respondent, Auguste Christiane Frederich Von Pfahlenburg-Marienburg, also known as Christiane Von Pfahlenburg, also known as Walther Kay Diener ("Mr. Von Pfahlenburg"), be committed for and in contempt in respect of previous orders made by this court. In addition, or in the alternative, the Law Society seeks a fine and an order for special costs against Mr. Von Pfahlenburg.

Background Facts

[2] The history of the proceedings between the Law Society and Mr. Von Pfahlenburg began some time ago in 2005.

[3] On August 31, 2005, the Law Society filed a petition in this action against Mr. Von Pfahlenburg and the corporate respondent (which I understand to be a company controlled by Mr. Von Pfahlenburg) seeking an injunction prohibiting them from practicing law as that term is defined in the *Legal Profession Act*, S.B.C. 1998, c. 9 (the "Act"). It is an undisputed fact that Mr. Von Pfahlenburg is not now, nor has he ever been, a member of the Law Society. Nor is he a practitioner of foreign law with a permit under the *Act*.

[4] The petition set out two circumstances which the Law Society argued established that Mr. Von Pfahlenburg was practicing law in contravention of the *Act*.

[5] The first circumstance related to certain dealings between Mr. Von Pfahlenburg and Muriel Jean Walsof from 1997 to 1999. Ms. Walsof gave evidence in this proceeding that during those years Mr. Von Pfahlenburg prepared residential tenancy agreements, prepared and filed small claims documents, prepared *Residential Tenancy Act* documents, appeared as her agent at a *Residential Tenancy Act* arbitration, provided legal advice with respect to the transfer of real property in England, prepared an agreement for a sale of real property in Kelowna and mortgage of that property, and finally, prepared wills for her and other members

of her family. All of these services were provided in the expectation of a fee, gain or reward and were billed by Mr. Von Pfahlenburg and paid by Ms. Walsof.

[6] The evidence from Ms. Walsof also disclosed that Mr. Von Pfahlenburg arranged for a purchase of Ms. Walsof's Kelowna property for \$140,000 to Christiane Von Pfahlenburg. The agreement involved payment of \$20,000 with the remainder by way of a vendor take-back mortgage of \$120,000. The transfer and mortgage were prepared by Mr. Von Pfahlenburg and the transfer was completed, but the mortgage was never registered. After the transfer, the "purchaser" refinanced the property to Sun Life Trust Company. When the property subsequently went into foreclosure, Ms. Walsof only received approximately \$19,000. All the while, it appears that during Mr. Von Pfahlenburg's dealing with Ms. Walsof, he was using an alias of the name Walther Kay Diener and in respect of the Kelowna purchase, the sale was actually made to himself under the name of "Von Pfahlenburg-Marienburg." As a result, Ms. Walsof suffered a substantial loss in respect of the dealings with her property based upon the advice of Mr. Von Pfahlenburg/Walther Kay Diener. Ms. Walsof therefore incurred a loss of approximately \$120,000 arising from these transactions.

[7] The second circumstance arose when the Law Society engaged a private investigator, David Canning, to investigate the services being offered by Mr. Von Pfahlenburg. Mr. Canning had a meeting with Mr. Von Pfahlenburg in November 2004, where he was posing as potential client. During the course of those discussions, Mr. Von Pfahlenburg offered various legal services in connection with a divorce and separation agreement, the incorporation of a company, the termination of an employee, and the recovery of funds from that employee. Mr. Von Pfahlenburg also advised Mr. Canning to transfer shares in a company he owned to Mr. Von Pfahlenburg as a trustee for the purpose of protecting Mr. Canning from any potential claim by his wife from whom he was separating.

[8] The petition and supporting affidavits were served on Mr. Von Pfahlenburg and no defence or answer was filed. Accordingly, on January 31, 2006, the court

granted an order against the respondents, (the "Injunction"), which provided that they were prohibited and enjoined from:

- (a) appearing as counsel or advocate;
- (b) drawing, revising or settling 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;
- (c) drawing, revising or settling a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person;
- (d) drawing, revising or settling a document relating in any way to a proceeding under a statute of Canada or British Columbia;
- (e) drawing, revising or settling an instrument relating to real or personal estate which is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
- (f) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
- (g) giving legal advice; and
- (h) offering to or holding himself out in any way as being qualified or entitled to provide to a person the legal services set out in (a) through (g) above;

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

[9] The Law Society was also awarded its costs of that proceeding and that amount was later taxed in the amount of \$2,890.49 on August 29, 2006.

[10] During submissions on this application, Mr. Von Pfahlenburg attempted to advance what he called "new" arguments against the allegations in the petition, explaining that he had been so "buried under paperwork" that he did not advance them before. Nevertheless, he conceded that he did not contest the granting of the Injunction.

[11] The parties were back before the court in this proceeding in October 2007 when the Law Society brought an application to hold Mr. Von Pfahlenburg in contempt, or alternatively, fine Mr. Von Pfahlenburg arising from breaches of the Injunction. On that application, the Law Society filed extensive affidavit evidence

concerning further breaches of the *Act* and breaches of the Injunction. The facts on that application are summarized as follows.

[12] In January 2007, Mr. Von Pfahlenburg commenced dealings with the Vancouver Pride Society. The Law Society filed affidavits from three representatives or former representatives of the Society who indicated that during that period of time Mr. Von Pfahlenburg provided legal advice to the Society in respect of corporate registry filings. During the course of his dealings with them, he held himself out at various times to be an attorney-at-law, a lawyer, and an attorney. His advice related to various corporate matters of the Society including dissolving the current board and having former members of the board resume office until a special general meeting could be convened. It is not clear from the material whether there was any specific expectation of a fee, gain or reward other than the evidence of Mr. Von Pfahlenburg that he asked certain representatives at a meeting whether "anyone at the meeting was paying him."

[13] In addition to matters with the Vancouver Pride Society, there were various other instances of Mr. Von Pfahlenburg communicating with the lawyer for the Ministry of the Attorney General Legal Services Branch and a lawyer with Fasken Martin DuMoulin LLP representing himself as an "attorney-at-law" or "attorney and agent."

[14] Mr. Von Pfahlenburg responded to the contempt application and relied on his own affidavit filed January 21, 2008, and an affidavit from Mr. Brisbin, another director of the Vancouver Pride Society, sworn January 17, 2008. Generally speaking, Mr. Von Pfahlenburg asserted that he had clearly advised the directors of the Vancouver Pride Society that he was not a lawyer or a member of the Law Society before their discussions. The Law Society subsequently applied to cross-examine Mr. Von Pfahlenburg and Mr. Brisbin and an order to that effect was granted on March 28, 2008. It is not clear to me whether those cross-examinations took place. In any event, responding affidavits from two directors of the Vancouver Pride Society were filed disputing Mr. Von Pfahlenburg and Mr. Brisbin's allegations

that Mr. Von Pfahlenburg had clearly stated that he was not a lawyer or a member of the Law Society and reconfirming their previous evidence. In part, a responding affidavit indicated there was a billing from Mr. Von Pfahlenburg to the Vancouver Pride Society for work done in December 2006.

[15] The contempt application was heard by Mr. Justice Romilly on May 5, 2008. Mr. Von Pfahlenburg appeared on his own behalf. The result was a consent order (the "Contempt Order") that Mr. Von Pfahlenburg be held in contempt of the court for disobeying the Injunction. Further, the court ordered that the punishment would be suspended for one year from May 5, 2008, and that Mr. Von Pfahlenburg be placed on probation on certain conditions. Those conditions are that:

- (a) Mr. Von Pfahlenburg keep the peace and be of good behaviour;
- (b) Mr. Von Pfahlenburg report to a probation office at Adult Probation Services within 7 days of the pronouncement of the Order, and thereafter as directed by the probation officer;
- (c) Mr. Von Pfahlenburg complete 100 hours of community work service as directed by the probation officer, on or before May 5, 2009;
- (d) on or before August 5, 2008 Mr. Von Pfahlenburg file with the Court and deliver to counsel for the Petitioner, a brief report prepared by his probation officer advising of the status of Mr. Von Pfahlenburg's community work service; and
- (e) at the conclusion of his community work service Mr. Von Pfahlenburg file with the Court and deliver to counsel for the Petitioner, a brief report prepared by his probation officer confirming the community work service has been satisfactorily completed.

[16] In addition, the Contempt Order provided for the further injunction against Mr. Von Pfahlenburg whereby he was:

... permanently prohibited and enjoined from holding himself out as a lawyer or otherwise identifying himself in any way that suggests that he is a lawyer or a member of the Law Society of British Columbia or a practitioner of foreign law.

[17] This provision expanded the terms of the Injunction in that there was no need to show that he had the expectation of any fee, gain, or reward as would otherwise

be required in respect of the "practice of law" in accordance with s. 1 of the *Act*. The Contempt Order also provided that the Law Society was awarded its special costs and disbursements of the application in the amount of \$3,000.

[18] It appears that Mr. Von Pfahlenburg filed a notice of motion on May 21, 2009, seeking to extend the time within which he was to perform the community work service from May 5, 2009 to December 5, 2009, and to relieve him of the requirement to pay the costs of the Law Society. Mr. Von Pfahlenburg filed an affidavit sworn May 21, 2009, stating that he had reported to his probation officer as directed by Justice Romilly and that he had completed 24 hours of community work service and had not completed the remainder "as a result of necessity." He further stated that "with all due respect to the authority of this Honourable Court, I have experienced a dearth of work as a result of this matter, and have prioritized the necessity of my survival ahead of the completion of the ordered community work service." Finally, he stated that he did not have the financial means to pay the costs. The Law Society opposed that application and it does not appear that that application proceeded.

The Nature of the Application

[19] The Law Society filed this notice of motion on April 9, 2010, seeking a committal order with respect to Mr. Von Pfahlenburg and/or a fine be paid by him on various grounds. Those grounds are as follows:

- (a) he has breached the probation terms under the Contempt Order;
- (b) he has offered to provide incorporation services contrary to the Injunction;
- (c) he has continued to provide legal advice contrary to the Injunction;

- (d) he has held himself out as entitled to and offering to commence certain Small Claims Court proceedings contrary to the Injunction; and
- (e) he has held himself out as a lawyer or otherwise identified himself as suggesting that he is a lawyer or a member of the Law Society or a practitioner of foreign law contrary to the Contempt Order.

[20] Mr. Von Pfahlenburg filed an affidavit October 12, 2010, in opposition to the application and made submissions on his own behalf at the hearing.

Discussion

Breach of the Probation Terms

[21] As stated above, Justice Romilly ordered that Mr. Von Pfahlenburg complete 100 hours of community work service by May 5, 2009. The Law Society filed an affidavit from Mr. Von Pfahlenburg's probation officer who stated that on May 4, 2009, Mr. Von Pfahlenburg reported to him that he had completed approximately 17 hours of such service with a local church and that he had further reported on May 28, 2009, that he had completed approximately 30 hours. Nevertheless, he did not provide his probation officer with any documentation to support that he had completed any such community work service.

[22] Mr. Von Pfahlenburg also apparently failed to attend a meeting with his probation officer on June 25, 2009. Mr. Von Pfahlenburg's response to these allegations is that from March 20, 2009 to April 15, 2009, he collaborated with the Rainbow Community Church with respect to searching for financing to purchase a building site as well as to develop proposals for redevelopment. His "support" for this proposition include some vague e-mails between himself and a Paul Donovan, who is said to be the director of operations for the church, between March 10 and March 20, 2009. He produced a glossy brochure which he called a "proposal outline of a similar redevelopment proposal", which on close inspection seems to have

nothing to do with any such project. Finally, Mr. Von Pfahlenburg, himself, states in his affidavit that "despite the fact that the order has lapsed it is my intention to complete my community work service hours."

[23] After a review of all of the evidence, I am satisfied that Mr. Von Pfahlenburg has failed to complete any of the community work service hours. These were ordered to be performed on or before May 2009, some one and one-half years ago. He has not provided any evidence of serious attempts to complete those hours beyond an offer to the B.C. Persons with Aids Association to prepare income tax returns (in June 2008, an offer which was declined), and a further offer to prepare income tax returns for seniors (in September 2008, to which he received no response). I am satisfied that Mr. Von Pfahlenburg is in breach of the Contempt Order in respect of the requirement to complete the hours of community work service on or before May 2009.

[24] Further, the Contempt Order provided that Mr. Von Pfahlenburg was, on or before August 5, 2008, to file with the court and deliver for counsel for the Law Society, a brief report prepared by his probation officer advising on the status of his community work service. Further, at the conclusion of his community work service, Mr. Von Pfahlenburg was to file with the court and deliver to counsel for the Law Society a brief report prepared by his probation officer confirming that the community work service had been satisfactorily completed. The Law Society wrote to Mr. Von Pfahlenburg on August 13, 2008, reminding him of the requirement to report by August 5, 2008. A reminder letter was forwarded on October 20, 2008. Despite these requests, Mr. Von Pfahlenburg has failed to file with the court and deliver to the Law Society's counsel any reports on the status of his efforts to complete these service hours. He provided no such report by August 5, 2008, or at any time. Further, there of course, has been no report confirming that the community work service has been satisfactorily completed since it has not been completed.

[25] Mr. Von Pfahlenburg responded that he did not provide the report because he understood that the report was to come from the probation officer responsible for the

file. With respect, such an interpretation by Mr. Von Pfahlenburg is unsupported given the clear wording of the Contempt Order. In his submissions, Mr. Von Pfahlenburg's response was to the point of being flippant about this requirement when he questioned why he, as opposed to the probation officer, should bear the cost of the postage stamp. While this breach of the Contempt Order is less serious than others considered on this application, I consider it consistent with the general attitude of Mr. Von Pfahlenburg in relation to the authority of this court and his disregard of the provisions of the *Act* and the court orders granted in this proceeding.

[26] I am satisfied that Mr. Von Pfahlenburg has not complied with the Contempt Order in respect of the report that was due August 5, 2008, and that Mr. Von Pfahlenburg has not provided any satisfactory or any excuse as to why he did not do so.

[27] Finally, Justice Romilly ordered that the Law Society recover its cost of the contempt application in the amount of \$3,000. In addition to the amount owed in respect of the Injunction, the total then owing was \$5,890.49. Mr. Von Pfahlenburg advised his probation officer on May 4, 2009 that he had paid approximately \$600 of these costs. No receipts or supporting documentation were provided. He made the same statement on May 28, 2009 to his probation officer and indicated that he was planning on paying \$300 more to the Law Society on June 12, 2009. The Law Society denies receiving any monies whatsoever. Mr. Von Pfahlenburg now admits in his affidavit that in fact he has not paid any amounts to the Law Society "because I have been unable to, and am unable to, support any additional costs at this time." During submissions, Mr. Von Pfahlenburg confirmed that this was the case although he "had \$600 in hand." The Law Society made attempts to obtain a monthly payment proposal from him without success. Mr. Von Pfahlenburg in his submissions indicated that he will likely have to go bankrupt.

[28] The circumstances of Mr. Von Pfahlenburg's statements to the probation officer are telling in that they show that Mr. Von Pfahlenburg appears to have no

hesitation in lying when it suits his purpose. In all of the circumstances I am satisfied that Mr. Von Pfahlenburg has failed to pay the amounts owing to the Law Society under both the Injunction and the Contempt Order.

Offering to Provide Incorporation Services

[29] The Injunction prohibits Mr. Von Pfahlenburg from offering to provide incorporation services under subparagraph (b) of that order. On August 13, 2008, it came to the attention of the Law Society that there were various postings on Craigslist and Kijiji, both on line classified ad websites. The Kijiji postings were listed under "Services-Financial, Legal" in July, August and September 2008. All of them refer to "start-ups and incorporations" or incorporation. The Craigslist postings were done in August 2008 and advertised for "great professional advice" in relation to "incorporating". The ads further refer to "selecting the right legal structure for your business" and ask that people call Mr. Von Pfahlenburg "to discuss how your business is structured."

[30] Mr. Von Pfahlenburg's response to these allegations is that the advertisements were posted "without my consent by another party", who he identifies as a former business partner. He makes the vague statement that the postings of those advertisements is subject to another application currently being prepared to be brought before the courts. No further detail is provided in respect of what this further application is or why this former business partner would post such ads. The ads mention no name or contact information other than that of Mr. Von Pfahlenburg. After reviewing the entirety of the evidence on this application, I do not find Mr. Von Pfahlenburg to be a credible person and I reject his denial that he, in fact, posted these ads. I find him in contempt of the Injunction for advertising such services.

Providing Legal Advice/Offering to Commence Small Claims Court Proceedings

[31] The Injunction prohibits Mr. Von Pfahlenburg from giving legal advice in accordance with subparagraph (g) of that order, and also prohibits him from drawing

or settling a document relating to a proceeding under a statute of Canada or British Columbia or do an act or negotiate for the settlement of a claim under subparagraphs (d) and (f).

[32] The Law Society filed an affidavit from Keith Johnson sworn January 21, 2010. Mr. Johnson had two legal matters for which he required assistance, one dealing with collection of a minor debt, and the other dealing with the resolution of an issue arising out of a share purchase agreement. Mr. Johnson met with Mr. Von Pfahlenburg in July 2009 and while Mr. Johnson confirms that Mr. Von Pfahlenburg told him that he was not "legally a lawyer," he did tell him that he was a partner in a law firm. Mr. Von Pfahlenburg then proceed to give Mr. Johnson legal advice in respect of commencing Small Claims Court proceedings for the collection of the debt. In addition, Mr. Von Pfahlenburg gave advice to Mr. Johnson regarding enforcement of certain issues arising under the share purchase agreement. Mr. Johnson's company, Revolution Studios Inc., was billed by Mr. Von Pfahlenburg for his services and this bill was paid.

[33] The legal services provided by Mr. Von Pfahlenburg to Mr. Johnson included a draft demand letter under the name of Mr. Von Pfahlenburg in respect of the debt which letter indicated that he had been "instructed to file the matter with the courts without further notice to you." Mr. Johnson confirms that Mr. Von Pfahlenburg was instructed to proceed to file the small claims court action if payment was not made. With respect to the share purchase agreement issue, Mr. Von Pfahlenburg provided a copy of what he termed a release form which was, in fact, a memorandum of understanding providing for a release with the words "Vancouver Registry" at the top of the page.

[34] Mr. Von Pfahlenburg filed an affidavit responding to these allegations which basically denied that he advised Mr. Johnson to file an application with Small Claims Court and that he was only assisting Mr. Johnson in the collection of amounts under the share purchase agreement and, as such, his role was limited to "financial and income tax-related aspects" relating to these matters. Further, in his submissions,

Mr. Von Pfahlenburg denied that the draft demand letter was his letter or that he prepared the memorandum of understanding, a contention that he did not even make in his affidavit filed in response to this application. In the circumstances, I do not accept his denial regarding these documents in the face of clear evidence from Mr. Johnson, which I accept, about what occurred in their dealings with each other. In fact, I do not accept any of Mr. Von Pfahlenburg's explanation on this issue inasmuch as the evidence from Mr. Johnson clearly shows that Mr. Von Pfahlenburg provided these legal services and provided legal advice to him, despite his initial protestations to the contrary that he was not a lawyer.

[35] The Law Society also points out that Mr. Von Pfahlenburg, through his representation of Mr. Johnson, collected \$651 on his behalf, which, despite Mr. Johnson's demand, was never forwarded to Mr. Johnson. In his submissions, Mr. Von Pfahlenburg indicated that he had not been able to arrange payment to Mr. Johnson or, alternatively, he was not sure whether he had mailed the money to Mr. Johnson. There is absolutely no evidence presented by Mr. Von Pfahlenburg to indicate that he forwarded this money to Mr. Johnson as money collected on his behalf. I view this as a serious matter, particularly since this is another instance of monetary loss arising from his actions and follows upon the loss to Ms. Walsof.

[36] I am satisfied that Mr. Von Pfahlenburg has breached the terms of the Injunction by giving legal advice and holding himself out as entitled to and offering to commence Small Claims Court proceedings on behalf of Mr. Johnson.

Holding Himself Out as a Lawyer

[37] The Contempt Order prohibits Mr. Von Pfahlenburg from holding himself out as a lawyer or otherwise identifying himself in any way that suggests he is a lawyer or a member of the Law Society whether or not there is any expectation of any fee, gain or reward.

[38] The circumstances relating to Mr. Johnson as noted above are evidence of Mr. Von Pfahlenburg's breach of this provision. Again, despite Mr. Von Pfahlenburg's

initial protestations that he was not legally a lawyer, he also said that he was familiar with legal issues as he was a "partner in a law firm". Mr. Von Pfahlenburg does not deny this allegation. Again, Mr. Von Pfahlenburg's response to this in his affidavit is that he did tell Mr. Johnson that he was not a lawyer and he goes on to suggest that Mr. Johnson's recollection of the initial discussions may not be entirely accurate by reason of fact that Mr. Johnson had been drinking at the time. I accept the evidence of Mr. Johnson on this point.

[39] The Law Society presented further evidence regarding the activities of Mr. Von Pfahlenburg. Firstly, there was evidence that he communicated with a legal assistant of the law firm of Gowling Lafleur Henderson LLP requesting a payout statement for a client.

[40] Further, Mr. Von Pfahlenburg held himself out as an "advocate" on behalf of Janet Thomsen, a resident of a senior citizens' residence and care centre. A voice mail message left by Mr. Von Pfahlenburg for Mrs. Kohm (who works as the Executive Director there) was transcribed by Mrs. Kohm and put into evidence and confirms that he used this word in describing himself. Ms. Thomsen also filed an affidavit on this application. In her affidavit, she states that she was introduced to Mr. Von Pfahlenburg by a fellow resident in December 2009. That resident described Mr. Von Pfahlenburg as a "good advocate and a lawyer advocate." The fellow resident (who Mr. Von Pfahlenburg said had also "engaged" him) told Ms. Thomsen that Mr. Von Pfahlenburg would open a bank account for her and look after deposits to her account and also look after her taxes. Ms. Thomsen began meeting with Mr. Von Pfahlenburg frequently after December 2009. Mr. Von Pfahlenburg proceeded to discuss Ms. Thomsen's income tax filings with her and she also provided him with authorization to allow him to deal with CRA regarding her taxes and the Ministry of Human Resources regarding requesting an increase to her disability payments. In January 2010, Mr. Von Pfahlenburg opened a chequing account for her and he advised her that he would be the trustee and legal advisor for her bank account. Mr. Von Pfahlenburg retained several blank cheques with respect to this account.

[41] Ms. Thomsen only learned about the court orders in these proceedings in early February 2010. She immediately contacted the bank to advise as to the cheques that Mr. Von Pfahlenburg had received and to close her account. She has attempted to contact Mr. Von Pfahlenburg to obtain a return of those cheques but to date, she has not received them back. She lodged a complaint with the Law Society on February 12, 2010, and eventually on February 25, 2010, she received a letter from Mr. Von Pfahlenburg. Strangely, this letter is dated December 15, 2009 (which coincides with the approximate date when they met and began their dealings) and purports to be advice from Mr. Von Pfahlenburg confirming to Ms. Thomsen that he is prohibited by court order from holding himself out as a legal advisor or providing legal advice in any form.

[42] Mr. Von Pfahlenburg's affidavit in response to these allegations is that he told Ms. Thomsen he would assist her with her various financial matters, but that he was not a lawyer and was not permitted to act in any legal capacity. He also indicates that eventually he had terminated his engagement with Ms. Thomsen as of March 30, 2010. Again, I do not find Mr. Von Pfahlenburg as a credible witness with respect to this issue. It is clear that by reason of what he said to Ms. Thomsen, she believed that he was a lawyer or advocate who would look after her best interests. Why Mr. Von Pfahlenburg would agree to perform these various services free of charge to a senior citizen in a care home in relation to her financial affairs where that senior citizen is a complete stranger to him is not explained. The evidence of Ms. Thomsen together with the evidence of Ms. Kohm convinces me that their version of their dealings with Mr. Von Pfahlenburg is accurate. His explanation is disingenuous and I find that Mr. Von Pfahlenburg is in breach of the Contempt Order in holding himself out as a lawyer or otherwise identifying himself in any way that suggests that he is a lawyer or a member of the Law Society.

Disposition

[43] For the reasons stated above, I find that the Law Society has established beyond a reasonable doubt that Mr. Von Pfahlenburg is in contempt of this court for

the second time by reason of his breaches of the Contempt Order and further breaches post-May 2008 in respect of the prohibited activities under the Injunction.

[44] That brings the court to the matter of sentencing. As can be seen from the above chronology, Mr. Von Pfahlenburg has already been before this court on two separate occasions, at which time orders were pronounced against him. Again, the evidence on this application indicates that the Law Society has been in fairly regular contact with him regarding his on-going activities in attempts to stop those activities. All of this has been to no avail in that Mr. Von Pfahlenburg seems intent on continuing his activities despite the provisions of the *Act* and orders of this court.

[45] In his submissions, Mr. Von Pfahlenburg stated a number of times that he never, at any time, intended to contravene any court order. Yet the breaches have continued. I can only conclude that Mr. Von Pfahlenburg has little regard for the authority of this court despite his protestations to the contrary in both his affidavits and during his submissions. In fact, during his submissions he advised the court that his survival was his first priority and I take it from this comment that his survival means that he intends to continue with his activities in an attempt to earn a living.

[46] The role of the court in fashioning an appropriate punishment must be to emphasize the gravity of the situation and introduce an element of deterrent to prevent any further breaches. Mr. Von Pfahlenburg has already been found to be in contempt of this court, yet it is clear that Mr. Von Pfahlenburg does not yet grasp the situation in that he has failed to abide by the terms of his probation as set out in the Contempt Order. In these circumstances it is difficult to see that the imposition of a further monetary award by way of a fine would have any impact whatsoever.

[47] Further, it is clear that the primary purpose behind the *Act* is to provide protection for the general public who retain legal advisors and pay for legal services: see *Law Society of British Columbia v. Lawrie* (1991), 59 B.C.L.R. (2d) 1 (C.A.) at para. 13.

[48] In this situation, this concern is heightened where Mr. Von Pfahlenburg had in the past personally benefitted from his relationship with Ms. Walsof in a situation where he was preparing legal documents and giving her legal advice. Those same concerns continue to this day in light of the financial irregularities of Mr. Von Pfahlenburg's relationship with Mr. Johnson. The public is entitled to protection in being able to obtain quality legal advice from trained professionals and the prohibition in the *Act* is meant to achieve that. This protection is paramount in relation to legal advice to members of the public who are particularly vulnerable, such as senior citizens. It bears repeating that there was an inherent vulnerability in Ms. Thomsen's situation where she provided banking authority to a complete stranger who held himself out to her as a "legal advisor." In fact, Mr. Von Pfahlenburg calls himself a "Certified Seniors Advisor" which indicates to me that he is particularly targeting his services to this part of the community.

[49] The Law Society has cited a number of decisions of this court where similar applications have been made to find parties in contempt of court for failing to abide by injunctions enjoining the practice of law as that term is defined under the *Act*.

[50] In *Law Society of British Columbia v. McLaughlin* (1992), 70 B.C.L.R. (2d) 235, the Law Society had obtained two consent orders enjoining Ms. McLaughlin from practicing law. She breached both of them. Ms. McLaughlin was found to be in contempt. In a later hearing before Justice Saunders (as she then was) on July 30, 1992, the court referred to two paramount features concerning punishment: protection of the public by ensuring compliance of the injunction and secondly, personal deterrence from disobeying an order of the court in the future. In the result, Justice Saunders suspended punishment and placed Ms. McLaughlin on probation for one year on terms which were very similar to the terms imposed by Justice Romilly in this case. Unfortunately, Ms. McLaughlin was still unclear on what services she was not able to offer and a further contempt application was brought in January 1999 before Justice Thackray (as he then was). A transcript of the proceedings indicates that Ms. McLaughlin had a better grasp then of what was required by her and ultimately, the Law Society and Ms. McLaughlin agreed on a

disposition. Accordingly, Justice Thackray held Ms. McLaughlin in contempt of court and ordered a fine of \$9,000, \$3,000 of which was to be paid no later than February 12, 1999, and monthly payments following. Any further punishment was suspended for one year, again on terms similar to that granted by Justice Saunders earlier in the proceedings, and also similar to that granted by Justice Romilly in these proceedings. Central to the disposition before Justice Thackray was that Ms. McLaughlin acknowledged the contempt, was contrite, and had taken steps to reorganize her business activities so that she did not run afoul of the court orders. None of those factors are present in this case.

[51] In *Law Society of British Columbia v. McLeod*, (December 17, 1998), Vancouver Registry No. A952288 (S.C.), there was similarly an injunction preventing Mr. McLeod from practising law in that he was not a lawyer. After dealing with a substantial number of court applications by which Mr. McLeod attempted to delay or avoid the court proceedings, the court proceeded to hear the contempt application. Similar to my findings with respect to Mr. Von Pfahlenburg, the court found Mr. McLeod to be not credible or truthful. Also, as I have found, the evidence from the Law Society in relation to Mr. McLeod established a "pattern, a scheme or a practice" followed by Mr. McLeod which involved holding himself out as a lawyer or a person having the same qualifications and skills of a lawyer and performing the tasks or functions which are clearly those of a lawyer (see para. 57).

[52] As in this case, some of the breaches were considered more minor than others. However, in the totality of all the evidence there were a number of breaches committed by Mr. McLeod. Justice Hood addressed the criteria in sentencing that are relevant in this case in imposing a sentence of eight months:

[128] As to the criteria of sentencing, Mr. Sanderson pointed out earlier that in sentencing contemnors the court gives consideration to a number of factors including the seriousness of the events, deterrence in the contemnor, protection of the public and the degree of intention involved in the conduct. In my view, the respondent's conduct was most serious. It is also my view that a strong response by the court to the respondent's conduct is necessary. The public must be protected from the respondent and that his defiance is flagrant and unintentional cannot be questioned. It can only bring the administration of justice into scorn.

[53] In *Law Society of British Columbia v. Hanson*, 2004 BCSC 825, Mr. Justice Rice also addressed a deliberate disobedience of an injunction which had earlier enjoined Mr. Hansen from practicing law. Justice Rice addressed the issue raised by Mr. Von Pfahlenburg in these proceedings in that Mr. Hansen contended that he had no intention to breach the court orders or practice law contrary to the *Act* since he had initially disclaimed that he was a lawyer or a member of the Law Society before dealing with his clients. Justice Rice rejected that any such "disclaimer" absolved the person of any wrongdoing where that person goes on to provide the prohibited legal services (see paras. 13 - 15).

[54] Accordingly, it is no answer for Mr. Von Pfahlenburg to say that he made those disclaimers at the outset and therefore had no intention of being in contempt of court. At the very best, any statements he made were equivocal and in any event his actions in providing the legal services afterwards did in fact result in those breaches occurring.

[55] Justice Rice committed Mr. Hansen to a period of incarceration of one month after which he was to complete 100 hours of community service on or before June 2005. Justice Rice's decision was upheld on appeal: 2005 BCCA 354, where the court stated the sentence was "neither unfit nor unreasonable."

[56] In *Law Society of British Columbia v. Dempsey*, 2007 BCSC 442, the Law Society was seeking an order of committal for contempt arising from breach of an injunction. The court rejected that a fine would be appropriate and was convinced that the only remedy which would have some prospect of deterrence was the incarceration of Mr. Dempsey for 30 days (see paras. 23 - 26).

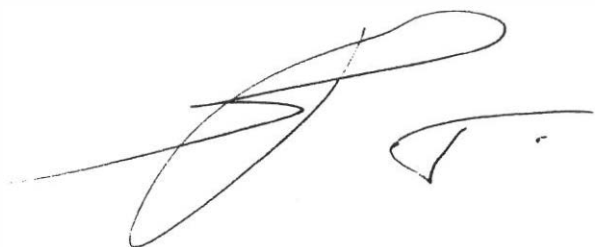
[57] Finally, in *Law Society of British Columbia v. Yehia*, 2008 BCSC 1172, Mr. Yehia was a disbarred lawyer who was found to be continuing to practice law. A consent injunction was granted by the court in March 2001. After further breaches, a consent order was granted which held Mr. Yehia in contempt of court and which also provided that Mr. Yehia would pay restitution in the amount of \$10,000 and costs, and also perform 250 hours of community service. The court found that Mr. Yehia

was in contempt of the consent order by his failure to make the payments in a timely fashion. There was a further allegation of contempt on the part of Mr. Yehia regarding him holding himself out as a lawyer; however, the court did not find that the Law Society had met the onus to prove that allegation. Justice Allan found that had Mr. Yehia been found guilty of representing himself as a lawyer in breach of the consent order, she would have had no hesitation in imposing a sentence of incarceration. She did not impose a jail sentence for his failure to make the payment in a timely fashion and instead imposed a further fine of \$1,450.

[58] After considering all of the circumstances of this case, it is my view that Mr. Von Pfahlenburg has little regard for the orders made by this court and efforts to deter his activities in the past have met with little success. This matter involves a second finding of contempt. While there is a difference in the seriousness of the various breaches, I consider many of the breaches to be serious from the point of view that Mr. Von Pfahlenburg's recent services have included financial matters and are consistent with the earlier case cited to me which resulted in a financial loss to his so called "client". The protection of the public is also of paramount concern, particularly with respect to vulnerable members of our society, such as senior citizens, who appear to be a part of the community that is particularly targeted by him. As stated earlier, Mr. Von Pfahlenburg's intention seems to be ensure his survival at the expense of both the authority of the court and prejudice to the public.

[59] In all the circumstances, I accept the submissions of the Law Society that a period of incarceration is in order. I order that Mr. Von Pfahlenburg be incarcerated for a period of 30 days.

[60] The Law Society also seeks special costs of this application. In light of the egregious and reprehensible conduct of Mr. Von Pfahlenburg, I have no hesitation ordering special costs of this application in favour of the Law Society.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a horizontal line and a small flourish.