IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Law Society of British Columbia v. Gorman,*** 2011 BCSC 1484

Date: 20111026
Docket: L001154
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And

John P. Gorman and
Gateway North International Property Management Inc.

Respondents

Before: The Honourable Mr. Justice Savage

Oral Reasons for Judgment

Counsel for the Petitioner:	M.J. Kleisinger
No appearance by the Respondents:	
Place and Date of Hearing:	Vancouver, B.C. October 25, 2011
Place and Date of Judgment:	Vancouver, B.C. October 26, 2011

I. Introduction

[1] This is an application by the Law Society of British Columbia to find John P. Gorman ("Gorman") in contempt of the order of Madam Justice Morrison made December 17, 2001. As an ancillary matter the Law Society also applies to expand the terms of the injunction.

[2] The Law Society is charged by s. 3 of the *Legal Profession Act,* S.B.C. 1998, c. 9 to "uphold and protect the public interest in the administration of justice" by ensuring that those who are unqualified, either in terms of competence or moral standing, are not given the right to practice law. The term "practice of law" is defined in s. 1 thus:

> "practice of law" includes
>
> (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),

[3] Gorman is a disbarred former Ontario lawyer. In 2001 he was found to be illegally practicing law in British Columbia in *Law Society of British Columbia v. John P. Gorman et. al.* (17 December 2001) Vancouver L001154 (B.C.S.C.). The order of Madam Justice Morrison is in the materials before me. The terms of the order, which follow the definition of the "practice of law", are as follows:

> THIS COURT ORDERS that
>
> 1. The Respondents, John P. Gorman and Gateway North International Property Management Inc., until such time as they become members in good standing of the Law

> Society of British Columbia, be prohibited and enjoined from doing the following in their personal capacity or under any business name:
>
> (a) appearing as counsel or advocate;
>
> (b) drawing, revising or settling:
>
> (i) a document for use in a proceeding, judicial or extra-judicial; or
>
> (ii) a document relating in any way to a proceeding under a statute of Canada or British Columbia;
>
> (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
>
> (d) giving legal advice,
>
> (e) making an offer to do anything referred to in paragraphs (a) to (d), and
>
> (f) making a representation that they are qualified or entitled to do anything referred to in paragraphs (a) to (d),

[4] It should be noted that not only is Gorman prohibited from performing the legal services listed in paragraphs 1(a) through 1(d), but he is prohibited from offering those legal services by paragraph 1(e) or representing himself as capable or entitled to perform those tasks by paragraph 1(f).

[5] The Law Society says that whether Gorman actually charged a fee for the services performed is not germane. Gorman is a disbarred lawyer from Ontario, and thus s. 15(3)(b) of the *Legal Profession Act* is triggered. That section reads as follows:

> 15(3) A person must not do any act described in paragraphs (a) to (g) of the definition of "practice of law" in section 1 (1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if
>
> ...
>
> (b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.

[6] It should be noted that Gorman, while appearing to the application and filing materials is not before me here today. Gorman has acted on his own behalf in the proceeding and filed affidavits both from himself and from "clients" with whom he has dealt. Gorman also filed an Application Response.

[7] The matter was originally set for hearing on June 8, 2011. Gorman requested an adjournment to cross-examine the Law Society's witnesses and to obtain counsel. An adjournment was agreed to on June 6, 2011 and a date set of October 25, 2011. With respect to the adjournment on June 6, 2011 Gorman wrote "Surely I can find Counsel to represent me in these matters with the adjourned date put off until late October". Later that day he sent a second email which said "Yes, that date is fine with me".

[8] There was some email and other correspondence back and forth between Gorman and the Law Society thereafter. That correspondence seemed to indicate that Gorman was preparing for the hearing, as he wrote the next day that:

> ...if I can get my Counsel up to speed in six weeks, I would think early August would be the time frame for that proceeding [cross-examination on affidavits], then leave for Ontario to set up my new business, and fly back out to B.C. for the hearing on October 25.

[9] On August 10, 2011 Gorman, who apparently had moved to Ontario, had a change of mind. He wrote:

> Further to your letter of June 9th, 2011 below, please be advised that I have left the jurisdiction, and will not be returning to British Columbia. I have moved to Ontario where I have 4 adult children, 8 grandchildren, 6 brothers and sisters and 42 nieces and nephews, and looking for work as a condo manager. **I totally object to your accusations that I have practiced law in B.C. without a license to do so, but I have no intention of being present at your silly motion in late October, 2011. Kindly advise the sitting Justice of my position. I have returned to Ontario to commence a civil and criminal case of conspiracy by the Law Society of Upper Canada and British Columbia for defamation of my reputation.** I have already commenced an Action for $20,000,000.00 damages for wrongful disbarment in 1984. [Emphasis added.]

[10] The Law Society wrote further to Gorman that it intended on proceeding with the application, and filed a further affidavit appending this correspondence and various letters to Gorman advising that the matter was proceeding as scheduled. Gorman did not respond to that correspondence but I am satisfied he received the correspondence based on the delivery confirmations of the emails attaching such correspondence.

[11] With respect to my jurisdiction to proceed in the absence of Gorman the Law Society referred to the recent decision of Powers J., in *Friedl v. Friedl*, 2011 BCSC 1319, where he imposed a sentence of 60 days' incarceration, but allowed Friedl liberty to apply to set aside the order on 7 days' notice.

[12] In *Sound Contracting Ltd. v. Regional District of Comox-Strathcona*, 2005 BCCA 167, the Court of Appeal upheld a finding of contempt made against parties who did not appear at or respond to an application where they had been personally served. While the contempt was purged, special costs were pegged to the finding of contempt, and upheld on appeal. McEwan J. made a finding of contempt against a corporate defendant who had been served but did not appear in *Moore et. al. v. RFID Systems Corp et. al.* (9 February 1999), Nelson 7887 (B.C.S.C.).

[13] Of course Rule 22-1(2) provides that "If a party to a chambers proceeding fails to attend at the hearing of the chambers proceeding, the court may proceed...." in circumstances where, in context, proceeding will further the object of the Rules of Court. In my view Rules 22-8(11) and 22-8(14) also support the Court's jurisdiction in these circumstances.

[14] Clearly Gorman has had ample notice of this proceeding. It was originally set for hearing on June 8, 2011. Although he filed an Application Response and supporting affidavits he then sought and obtained an adjournment. Gorman then agreed on the date for the adjourned hearing but has now chosen not to appear.

[15] In my opinion it is appropriate to hear the application in these circumstances.

II. Allegations of Matters Giving Rise to Contempt

[16] There are two main matters that the Law Society relies upon to show that Gorman was in contempt of Madam Justice Morrison's order. The first matter concerns a dispute between Larry and Shirley Cleary regarding a dispute the Clearys had with their insurers and their strata corporation (the "Cleary Matter"). The second matter concerns a dispute between Leann Stothard and Darin Ridout and the Sea to Sky International Language School ("SSILS") regarding tuition fees (the "Stothard Matter").

[17] Regarding both matters it appears that the material facts are not in dispute, and are revealed by the documents filed with the affidavits. At most it is the implications to be drawn from those facts that are contested.

A. The Cleary Matter

[18] In May 2007 Gorman wrote an email in the Cleary Matter marked "without prejudice" to a property management company regarding a dispute on behalf of Larry and Shirley Cleary. Gorman demanded that the property management company deliver a $5,000 payment within 10 days or he was instructed to assist in brining an action in Small Claims Court for breach of contract and damages. Gorman recommended to the Clearys that they "go after" the strata corporation.

[19] An attached letter indicated that Gorman had negotiated a settlement of a claim with an insurer. Later that month Gorman made another demand of the property management company marked "without prejudice" and on letterhead titled "John P. Gorman, B.A., LL.B., THE STRATA ADVOCATE". To this letter Gorman attached an unfiled Notice of claim which he said he had drafted and attempted to file at the Surrey Small Claims Registry. Gorman threatened legal action if the company did not negotiate with him or the Clearys.

[20] As Gorman is unrepresented and indeed not present I have reviewed carefully the affidavits filed by him.

[21] The affidavits filed by and on behalf of Gorman do not deny these primary facts. Gorman's affidavit takes issue with his treatment by the Law Society of Upper Canada, refers

generally to his view of bankers and law societies, and other matters such his efforts to assist other persons.

[22] The affidavits supporting Gorman assert that Gorman did not charge for his services and told his "clients" that he is not a lawyer. Those affidavits also contain statements involving characterizations of his conduct such as "Mr. John Gorman has never acted as legal counsel for me nor has he represented me in any legal matter at any time since I have known him". Notwithstanding such statements, that Gorman wrote the letters and took the actions he is alleged to have taken is not disputed.

B. The Stothard Matter

[23] In June, 2010, SSILS received an email from Gorman with the subject line "Fwd: Demand Letter". Gorman purported to be "Counsel for Leann Stothard and Darin Ridout" in their dispute with SSILS which was an educational institution. Gorman's letter was on letterhead "JOHN P. GORMAN, B.A., LL.B." and the letter is marked "WITHOUT PREJUDICE". The letter demands payment of $4,075.00 in ten days "or further steps will be taken at expenses far greater than the amount owing". The letter is signed "John P. Gorman, B.A., LL.B., Counsel".

[24] Later the next month another letter was sent to SSILS marked "without prejudice" and demanding payment by July 12, 2010 or "Be subject to the consequences". After contact with the Law Society Gorman advised that Stothard and Ridout take the correspondence received from SSILS to Crown Counsel.

[25] Affidavits filed by and on behalf of Gorman do not deny these facts and are of the same natures as described above with respect to the Cleary Matter. Those affidavits, where they address the issues here, offer characterizations without disputing the primary facts.

III. Contempt Generally

[26] The principles that govern an application for an order for contempt in this case are those which concern the breaching of a court order. The Court is exercising its power of contempt to uphold its dignity and process and respect for the rule of law. It is a civil contempt to disobey an order of the Court: *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 8.

[27] The onus is on the applicant to prove the elements of contempt beyond a reasonable doubt: *Bhatnager v. Canada (Minister of Employment & Immigration)*, [1990] 2 S.C.R. 217 at p. 224. As Justice Allan observed in *Law Society of B.C. v. Yehia*, 2008 BCSC 1172, the applicant must prove that the alleged contemnor had notice of the order and deliberately engaged in the conduct and disobeyed the order. Except in instanter proceedings, the evidence

in support of the application must be evidence that would be admissible at trial. Any ambiguity in the order redounds to the benefit of the alleged contemnor.

[28] The elements of civil contempt for breach of a court order are: (1) the existence of a court order, *e.g.*, an injunction prohibiting certain acts; (2) the alleged contemnor knew of the existence of the order and its terms; and (3) the alleged contemnor did one or more acts amounting to the disobedience of the terms of the order: *International Forest Products v. Kern*, 2000 BCSC 736, aff'd 2004 BCCA 349.

IV. Proof of Contempt in this Case

[29] With respect to the first two elements of civil contempt, it is clear that there is a court order and that Gorman knew of it and its terms. Gorman appeared on his own behalf before Morrison J., and signed the order. Gorman's own material shows that he practiced as a lawyer for over ten years before his disbarment by the Law Society of Upper Canada. I can have no doubt that he knew of the order and its terms.

[30] In my opinion the evidence establishes beyond a reasonable doubt that Gorman drew a document for use in a proceeding within the meaning described in the order. It is not disputed that Gorman drafted a Notice of Claim for use in the Small Claims Proceeding on behalf of the Clearys. While the Notice of Claim was not accepted by the Small Claims Registry, these acts are nevertheless in contravention of paragraphs 1(b)(i) and 1(b)(ii) of Morrison J.'s order. In my view, by drafting pleadings and providing them to the opposing party, Gorman was also in contravention of paragraph 1(f) of the order, by representing himself as qualified to do these acts.

[31] Paragraph 1(c) of the order prohibits Gorman from "doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages". Gorman's demand letters and attempts to negotiate claims against the management company and SSILS in my opinion clearly contravene paragraph 1(c) of the order, which prohibits "doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages". In my view Gorman was clearly in contravention of this paragraph by what he did in both the Cleary Matter and the Stothard Matter.

[32] Even though Gorman denies making representations to his clients regarding his qualifications, in my view he clearly represented to third parties through his correspondence and letterhead that he was qualified and entitled to embark on the negotiation of these claims. By doing such, he was in contravention of paragraph 1(f) of the order, as he was representing to these third parties that he was qualified or entitled to negotiate these claims on behalf of his clients.

[33] In my view all of the elements requiring proof have been proven beyond a reasonable doubt. In the circumstances I find Gorman in contempt of the order of Morrison J.

V. Application to Expand Injunction

[34] The Law Society applies to expand the terms of the injunction to prohibit Gorman from representing himself as a lawyer. As can be seen, Gorman at various times, calls himself the "Strata Advocate" and signs his name as "Counsel" while prominently displaying the designation "L.L.B." on his letterhead. Gorman uses legal terms such as "without prejudice" in his correspondence when representing third parties.

[35] In my opinion the juxtaposition of these titles with his university qualification is clearly designed to mislead those with whom he is dealing. This is furthered by his use of legal terminology such as "without prejudice" when acting on behalf of third parties.

[36] Section 15(4) of the *Legal Professions Act* provides as follows:

> (4) A person must not falsely represent himself, herself or any other person as being
>
> (a) a lawyer,
>
> (b) an articled student, a student-at-law or a law clerk, or
>
> (c) a person referred to in subsection (1) (e) or (f).

[37] An injunction in this case is merely to prohibit breaches of the statute which, like any law, is required to be obeyed. The law in this case is enacted for the protection of the public. I agree with counsel's submission that in such case the evidentiary threshold is low, as the injunction merely operates to prohibit breach of the statute, which is impermissible conduct in any event: see *Law Society v. Targosz*, 2010 BCSC 969, at paras. 40-42.

[38] In my opinion the appropriate order in this regard is as follows:

> That until such time as the Respondent, John P. Gorman becomes a member in good standing of the Law Society of British Columbia, that he is permanently prohibited and enjoined from representing himself to be a lawyer, counsel or advocate in British Columbia.

VI. Penalty

[39] The factors for the Court to consider when deciding upon a punishment for contempt were canvassed by Allan J. in *Yehia*, at paras. 52-53, and include (1) individual and general deterrence; (2) the seriousness of the offence; (3) the protection of the public; (4) the ability to pay a fine; (5) the degree of intention in the contemptuous conduct; (6) the past record and character of the contemnor; and (7) whether there are previous contempts. The Law Society asks for a fine and period of incarceration.

[40] In this case Gorman has been before law societies more than once. He is a previously disbarred lawyer, who was disbarred for wrongfully practising law in another jurisdiction. He is fully capable of understanding the prohibitions placed upon him but has chosen to ignore them. Indeed, he has characterized the application as a "silly motion".

[41] On reviewing the particular matters at issue here, there is no evidence that his actions have created harm. Notwithstanding that, however, in my view the protection of the public is a compelling interest behind the prohibitions provided for in the *Legal Professions Act.*

[42] In my opinion it is appropriate to impose both a period of incarceration and a fine. In my opinion an appropriate fine in this case is $5,000. An appropriate period of incarceration is two weeks. In light of the fact that Gorman is not here to speak to penalty I impose the following condition: that Gorman is at liberty to make application to set aside the penalty provisions of this order for a period of 60 days from delivery of this order. Although Gorman may be represented by counsel, for such application he must personally appear before this Court.

VII. Costs

[43] As the Court of Appeal noted in *Sound Contracting*, at para. 17, "Special costs are awarded on the basis of reprehensible conduct and...wilful disobedience of a court order is reprehensible conduct within the meaning of that word as it is used in the context of special costs". There has been wilful disobedience of a court order in this case.

[44] The Law Society shall have special costs.

[45] I would dispense with the requirement that Gorman endorse the order which may be submitted directly to the Court.

The Honourable Mr. Justice J.E.D. Savage