

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of B.C. v. Lauren*,
2012 BCSC 738

Date: 20120504
Docket: S113309
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And:

Marlane Lauren

Respondent

Before: The Honourable Mr. Justice Abrioux

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner

M.J. Kleisinger

Appearing on her own behalf

M. Lauren

Place & Date of Hearing:

Vancouver, B.C.
April 30, 2012

Place & Date of Judgment:

Vancouver, B.C.
May 4, 2012

Introduction

[1] **THE COURT:** The applicant, Law Society of British Columbia to whom I shall refer in these reasons as “the Law Society”, seeks the following orders:

- (1) the respondent, Marlane Lauren, be found in contempt of the order of this Honourable Court pronounced and entered on August 17, 2011;
- (2) the respondent be committed for such length of time as the Court deems appropriate;
- (3) the respondent be fined an amount that the court deems appropriate;
- (4) she pay restitution to those she charged to perform legal services contrary to the *Legal Profession Act*,
- (5) she be ordered to immediately return all documents in her possession which belong to former clients, Robin Loder and Brad Flewelling; and
- (6) she pay special costs.

[2] This application was heard on April 30, 2012. The respondent appeared in person. She sought to adjourn the application, but I ruled it should proceed. The respondent had notice of the Law Society's application for some time, it being filed on March 13, 2012. The application had been adjourned on one prior occasion at the respondent's request and no persuasive reason was provided to me as to why it should be adjourned once again. In particular, the respondent had advised counsel for the Law Society on April 27, 2012, she had not filed a response and intended to make submissions at the hearing of the application. She noted the material she had been provided with was true and she would concede this.

Background

[3] The respondent is not now and has never been a member of the Law Society, a law student, or an articled student in British Columbia. Furthermore, the evidence before me is that the Law Society has no record of Ms. Lauren applying for any status including becoming a practitioner of foreign law, an articled student, or to take part in any professional legal training course. In October 2010, the Law Society commenced an investigation after receiving complaints Ms. Lauren was engaging in the practice of law. In November 2010, the respondent provided the Law Society with an undertaking in which she agreed not to engage in the practice of law.

[4] The background to the undertaking is set out in some correspondence from the Law Society to Ms. Lauren. One letter dated November the 1st, 2010, includes the following:

As mentioned in our previous letter it is the Law Society's concern you are currently engaged in the unauthorized practice of law regarding your representation of Ms. De Silva. We have received additional information that you are representing or otherwise advising Ms. Hyacinth Shreeves in an employment dispute.

[5] The letter goes on to state the Law Society requires the respondent to cease engaging in the unauthorized practice of law. On November 16, 2010, at a time when the respondent had apparently agreed to sign an undertaking, the following letter was sent to her by the Law Society which stated in part:

Although you have agreed to sign the undertaking, we remain concerned about several of the comments made during our telephone conversation. Specifically, you mentioned that you have charged Ms. De Silva and other "clients" for providing legal services such as legal research and legal advice.

[6] The letter went on to repeat what had already been communicated in the past to the respondent, being her actions were in contravention of the *Legal Profession Act*.

[7] On November 18, 2010, the respondent signed an undertaking and covenant which is broad in its terms. A copy of the undertaking and covenant was in the evidence before me.

[8] In January and February of 2011, the Law Society became aware Ms. Lauren continued to advertise legal services. It believed she was holding herself out as a lawyer or an articled student and was continuing to engage in the practice of law. On May 18, 2011, the Law Society brought a petition seeking the relief which was eventually granted and to which I shall make reference.

[9] On June 24, 2011, Ms. Lauren was personally served with the petition and the supporting materials. She did not file a response to the petition nor did she respond to the Law Society's correspondence.

[10] On August 17, 2011, after hearing from counsel for the Law Society, Mr. Justice Davies granted an order on the following terms:

1. The Respondent, Marlane Lauren, until such time as she becomes a member in good standing of the Law Society be permanently 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 document for use in a proceeding, judicial or extra-judicial;
 - (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 any act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
 - (g) agreeing to place at the disposal of another person the services of a lawyer;
 - (h) giving legal advice;
 - (i) making an offer to do anything referred to in paragraphs (a) to (h); and
 - (j) making a representation that she is qualified or entitled to do anything referred to in paragraphs (a) to (h) for or in the expectation of a fee, gain or reward direct or indirect, from the person for whom the acts are performed;
2. The Respondent, Marlane Lauren, until such time as she becomes a member in good standing of the Law Society be permanently prohibited and enjoined from falsely representing herself as being:
 - (a) a lawyer;
 - (b) an articled student, a student-at-law or a law clerk; or
 - (c) a lawyer of another jurisdiction permitted to practice law under section 16(2)(a) of the *Legal Profession Act*, to the extent permitted under that section; and
 - (d) a practitioner of foreign law holding a permit under section 17(1)(a) of the *Legal Profession Act*, to the extent permitted under that section;

3. Except as permitted under section 15(1) of the *Legal Profession Act*, the Respondent, Marlane Lauren, be permanently prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court, in the Respondent's own name or in the name of another person; and
4. The Law Society is awarded its costs in the amount of \$5721.00.

“the Order”

[11] On August 17, 2011, the Law Society forwarded the Order to Ms. Lauren by email, regular mail, and by fax and, in December 2011, posted a description of the Order, on its website.

[12] On or about February the 20, 2012, it also personally served Ms. Lauren with subpoena to debtor materials. This pertained to the award of costs which it had been awarded. Ms. Lauren acknowledged she received all the materials and correspondence which the Law Society states was sent to her with respect to this matter including the Order. As I have noted, the Order was sent by various means of communication, including email on August 17, 2011.

[13] The Law Society refers to two specific matters in support of the relief it seeks.

The Flewelling Matter

[14] The Law Society alleges that between February and June 2011, Mr. Flewelling paid the respondent approximately \$1,000 in cash to provide him with legal advice with respect to a lawsuit in which he was a party. This litigation involved Vancouver City Savings and Credit Union. On or about June 7, 2011, Mr. Flewelling had signed a retainer agreement provided by the respondent. In June of 2011, he transferred \$2,000 and on June 9 and June 19, 2011 he transferred \$500 to the respondent's bank account all pursuant to her retainer agreement. It is alleged Mr. Flewelling paid the respondent to perform legal research, provided legal advice, attempted to negotiate a settlement of his claim, and drafted and filed legal documents with respect to his claim against the credit union. It is alleged at no time did Ms. Lauren advise Mr. Flewelling of the petition or the Order. Instead, she continued to provide legal assistance after the Order was made on August the 17th

of 2011. It is alleged Ms. Lauren also remained in possession of Mr. Flewelling's various original files and he requires them.

The Loder Matter

[15] In so far as the Loder matter is concerned, it is alleged that in August of 2011, approximately two weeks before the hearing of the petition, Ms. Lauren solicited Mr. Loder to provide him with legal services. Furthermore, on or about August 22, 2011, mere days after the Order was made, she provided him with a retainer agreement offering legal services at a fee of \$50 per hour with a retainer of \$250 being required. It is alleged Mr. Loder did transfer the funds to Ms. Lauren's bank account as a retainer to assist with a Small Claims matter.

[16] It is alleged that from August the 22nd of 2011 to March of 2012, the respondent purported to assist Mr. Loder with his Small Claims action. This included providing him with legal advice and legal research with respect to an employment issue, contract law, as well as Small Claims procedure. She also offered to attend as his representative at hearings and settlement conferences. She offered and purported to draft and file a statement of defence and other pleadings. On October 19, 2011, Mr. Loder provided the respondent with an additional \$750 for the legal services. As at March 1, 2012, it is alleged Ms. Lauren continued to advise Mr. Loder she was working on his case. In addition to being paid the \$1,000 to which I have referred, she remains in possession of his documents. It is said this has prejudiced his ability to defend the Small Claims matter.

[17] It is also alleged that Ms. Lauren misrepresented herself to both Mr. Flewelling and Mr. Loder as being a lawyer from California who was writing the bar exam in British Columbia. It is said she indicated to both persons she was capable and qualified to practice law in this province. Following the granting of the Order, it is alleged that when Mr. Loder and Mr. Flewelling became aware of its existence they discussed it with the respondent. She apparently told both of them the Order did not hinder her ability to act for them.

The Law

[18] I now proceed to set out the law which applies on an application such as this. Section 3 of the *Legal Profession Act*, S.B.C. 1998, c. 9, requires the Law Society "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." See also *Law Society v. Gorman*, 2011 BCSC 1484; *Law Society et al v. Constantini et al*, 2002 BCSC 1399; and the *Law Society v. Lawrie*, [1991] B.C.J. No. 2653 (C.A.). In the *Law Society of British Columbia v. Gorman*, Savage J. summarized the principles which apply to 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.

The Position of the Parties

(a) The Law Society

[19] The Law Society submits Ms. Lauren has breached paragraph 1 of the order by performing the following acts for fees charged to Mr. Loder and Mr. Flewelling pursuant to retainer agreements:

- (a) offering to appear as counsel or advocate;
- (b) offering to prepare pleadings and other documents to be filed in the Supreme and Small Claims Court;
- (c) offering to negotiate in any way the settlement of or settling a claim or demand for damages;
- (d) giving both procedural and substantive legal advice; and
- (e) falsely representing to Mr. Loder and Mr. Flewelling that she was qualified or entitled to do these acts.

[20] In so far as paragraph 2 of the order is concerned, it prohibits Ms. Lauren from falsely representing herself as a lawyer, articled student, or a lawyer of another jurisdiction and a practitioner of foreign law. The Law Society submits the respondent falsely represented herself as a California lawyer who was writing the B.C. bar exam.

(b) The Respondent

[21] As I have noted, Ms. Lauren did not file a response to the petition. No affidavit or other evidence was before the court on her behalf. I have, however, taken into account the unsworn submissions the respondent made including reference to certain factual matters and allegations.

[22] The respondent obtained an LLB from the University of Saskatchewan 10 years ago. In addition, she worked with attorneys in California for several years prior to coming to British Columbia. The respondent's principal position is that when she received the petition and the notice of application relating to the injunction on June 24, 2011, she assumed this had to do with the De Silva matter to which I referred earlier. Since she was no longer performing any services for Ms. De Silva and since

she had signed the undertaking and covenant in November of 2011, she believed there was no need for her to respond to the petition. Although advised by counsel for the Law Society that if a response were not filed, the petition may proceed without further notice, she still did not file a response. Accordingly, the petition was heard on August 17, 2011, without her being present. The respondent acknowledges she received a copy of the Order after it was sent to her on August 17, 2011. She again assumed it related to the De Silva matter.

[23] In response to what the Law Society alleged occurred with respect to Mr. Flewelling and Mr. Loder, the respondent does not challenge any of the facts set out in the notice of application and the evidence adduced with the exception of the following.

[24] Firstly, she denies advising Mr. Flewelling that he would recover \$10 million in damages. Furthermore, she says that Mr. Flewelling represented himself at times during the prior proceedings. She says he had, in fact, filed on his own behalf the application seeking leave to appeal to the Supreme Court of Canada from the dismissal of his appeal by the British Columbia Court of Appeal. That had occurred just a few days before her initial involvement with him. She further says that claims including constructive fraud were not items she raised, but were issues which Mr. Flewelling had considered on his own prior to her involvement. Ms. Lauren acknowledges receiving funds from Mr. Flewelling pursuant to the retainer agreement, being \$2,000, but says that she does not believe she received an additional \$1,000. She believed the additional amount was approximately \$300 to \$350.

[25] In so far as Mr. Loder was concerned, she provided advice with respect to an action in which he was involved as defendant, but which pertained to a personal guarantee he had provided. The issue of a wrongful dismissal was raised, but this was never pursued and no fee was charged in relation to that potential claim.

[26] The respondent also stated she did not advise either Mr. Flewelling or Mr. Loder that her Law Society issue would be resolved when she wrote the bar exam.

She did tell them that her problem with the Law Society had originated due to the De Silva matter. In response to the allegations generally, the respondent states that her Craigslist advertisement clearly indicated she was not authorized to practice law or give legal advice in British Columbia. The advertisements were also to the effect she was preparing for the B.C. bar.

Analysis and Discussion

[27] With respect to the first two elements of civil contempt, I find the evidence establishes beyond a reasonable doubt there was a court order and the respondent knew of it and its terms. I do not accept Ms. Lauren's explanation she interpreted the Order to relate only to the De Silva matter. The wording of the Order is clear and unambiguous. It is not credible that the respondent with her educational background, which included a law degree and working with an attorney in California for many years, could interpret the Order in the manner she now alleges. Quite apart from the wording of the Order itself is the fact that on her own submissions, the respondent's involvement in the De Silva matter had ended prior to the undertaking which she executed in November 2010. The petition was filed and served in March 2011. The Order was obtained and served in mid-August 2011. All these events occurred many months after the conclusion of the respondent's involvement in the De Silva matter.

[28] I also find the evidence establishes beyond a reasonable doubt the third element of civil contempt, that is, the respondent deliberately engaged in the conduct and disobeyed the order.

[29] In so far as Mr. Flewelling is concerned, the email exchanges between the respondent, Mr. Flewelling, and Ms. Pam Brad, his spouse, commencing August 21, 2011, and ending December 11, 2011, establish beyond a reasonable doubt a breach of paragraphs 1(c), (d), (f), (h), (i), and (j) of the Order and paragraph 3 of the Order. The evidence of Mr. Loder, which I accept, establishes beyond a reasonable doubt additional breaches of the same paragraphs of the Order and, in addition, paragraph 1(a). In fact, on August 22, 2011, five days after the Order was made, the

respondent sent Mr. Loder an agreement entitled "Legal Services Retainer Agreement" which was attached to the following email:

Hi Robin, good to speak with you again. Attached is the retainer agreement. Feel free to call me if you have any questions. You can either just send the sig page or you can bring with you on Thursday ... please send the notice of claim. I will get started on your trial statement.

[30] Furthermore, although Mr. Loder and Ms. Lauren apparently never met in person, it is beyond a reasonable doubt, in my view, that the respondent acted contrary to the Order. On October 18, 2011, for example, the respondent acted contrary to the order including charging a fee for her services. That day she sent an email to Mr. Loder which included the following:

A couple of things. I will have your amended response/counterclaim and trial statement done later today. I have canvassed every angle of the law there is and your reply is top shelf ... Your argument is strong, though the personal guarantee is tricky to argue. Cisco will be served with a big firm response and I will assume they do not see it coming. Keep in mind the agreement states that you have to pay attorney fees in the event you lose which could be as great as the amount claimed, though the objective is to win.

There is then the better part of a typed page of legal advice under the title, "Rules for Determining Partnership."

[31] Accordingly, I conclude all of the elements requiring proof on this application have been proven beyond a reasonable doubt. In the circumstances, I find the respondent in contempt of the order of Davies J.

[32] Now, Ms. Lauren, on April 30th, you made no submission to me regarding penalty or punishment in the event that I find you in civil contempt of court. I have now found you in contempt. Rule 22-8 of the *Rules of Court* sets out the power of the court to punish for contempt. It is in the following terms:

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

[33] You are aware from counsel's submissions on April 30th that the Law Society is seeking an order of committal of between 14 and 30 days and a \$5,000 fine. They also seek an order that you reimburse Mr. Flewelling and Mr. Loder for the fees

charged. Since I have now found you in civil contempt of court, I want to provide you with the opportunity to make submissions to me on the question of penalty. Do you want to do that?

[34] MS. LAUREN: Yes, Your Honour.

[SUBMISSIONS REGARDING HEARING DATE FOR PENALTY PHASE OF THE PROCEEDING]

“Abrioux J.”