

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v. MacDugall*,  
2014 BCSC 2528

Date: 20140909  
Docket: S144783  
Registry: Vancouver

Between:

**The Law Society of British Columbia**

Petitioner

And:

**Francisco MacDugall**

Respondent

Before: The Honourable Madam Justice Watchuk

## **Oral Reasons for Judgment In Chambers**

Counsel for the Petitioner:

M.J. Kleisinger

For the Respondent:

No appearance

Place and Date of Hearing:

Vancouver, B.C.  
September 9, 2014

Place and Date of Judgment:

Vancouver, B.C.  
September 9, 2014

[1] **THE COURT:** This is an application by way of petition by the Law Society of British Columbia against the respondent, Francisco MacDugall.

[2] The orders which are sought by the petitioner, the Law Society, are as set out in paragraphs 1, 2, and 3 on page 3 of the petition date-stamped June 18, 2014 (the “Petition”):

1. The Respondent, Francisco MacDugall, until such time as he 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 document for use in a proceeding, judicial or extra-judicial;
  - (c) drawing, revising or settling a document relating in any way to a proceeding under a statute of Canada or British Columbia;
  - (d) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
  - (e) giving legal advice;
  - (f) making an offer to do anything referred to in paragraphs (a) to (e); and
  - (g) making a representation that he is qualified or entitled to do anything referred to in paragraphs (a) to (e) for or in the expectation of a fee, gain or reward direct or indirect, from the person for whom the acts are performed.
2. Until such time as he becomes a member in good standing of the Law Society, Mr. MacDugall be permanently prohibited and enjoined from representing or holding himself out as a lawyer, articled student, student-at-law, law clerk, attorney, counsel or in any other manner that connotes he is qualified or entitled to engage in the practice of law.
3. The Law Society be awarded its costs.

[3] The factual basis for the Petition is set out in Part 2 of the Petition. Those pages are included and incorporated by reference into these Reasons. On the basis of the evidence and submissions of the petitioner, they are adopted as findings of fact:

**Background and the Prana Yoga Action**

1. Mr. MacDugall is not now, and has never been, a member of the Law Society.

2. In 2012, the Private Career Training Institutions Agency ("PCTIA") sought an injunction restraining Prana Yoga Teacher College ("Prana") from operating a yoga instruction school.
3. On November 23, 2012, Mr. MacDugall appeared in court with Bernard Yankson on behalf of Prana. Mr. Yankson advised the court that they appeared as "consultants." After learning that the consultants were receiving an indirect benefit for representing Prana, Mr. Justice Voith stood the matter down so that Mr. MacDugall and Mr. Yankson could review the *Legal Profession Act*, S. B.C. 1998, c. 9. After the recess, Mr. Yankson stated that they had reviewed the *Legal Profession Act* and were of the view that it did not prohibit them from appearing on Prana's behalf. The hearing proceeded.

[4] By way of summary, the concerns which led to the Petition arise from, firstly, the Prana Yoga action and secondly, the Horscroft complaint:

4. At the hearing, Prana's primary position was that Prana had previously terminated the "contract" it had with PCTIA and was, therefore, not subject to PCTIA's oversight. On January 8, 2013, the court granted the injunction with costs against Prana. In doing so, the court noted that parties cannot contract out of legislation enacted in the public interest.
5. On October 16, 2013, in *Yankson v Canada (Attorney General)*, 2013 BCSC 2332, Mr. Justice Savage declared Mr. Yankson a vexatious litigant after allegations that his materials displayed the hallmarks of an "organized pseudo-legal commercial argument," as described in *Meads v Meads*, 2012 ABQB 571.

#### **The Horscroft Complaint**

6. Prior to Mr. MacDugall's involvement, Natalie Horscroft's yoga instruction school ("Pacific Elements") had been duly registered with PCTIA. In early 2014, Ms. Horscroft sought advice on how she could avoid the costs of PCTIA's oversight. Prana's principal referred her to Mr. MacDugall.
7. In January 2014, Mr. MacDugall told Ms. Horscroft that he was an 'attorney' who could help her opt out of PCTIA's oversight as he had previously done as Prana's attorney. Mr. MacDugall offered to advise Ms. Horscroft on the process and draft the necessary documents for \$1,500. As an "attorney", Ms. Horscroft believed that Mr. MacDugall was qualified and able to assist her with her legal matter.
8. On or about February 16, 2014, Mr. MacDugall provided Ms. Horscroft with a "Contract for Private Attorney Services" which stated in part:

Francisco MacDugall will work for Natalie Horscroft and her company . . . in the capacity of a private attorney for the purpose of assisting and consulting with the process of lawfully terminating the contract Natalie and her company have with [PCTIA].

Due to the nature of PCTIA's reputation with harassment and false pretense with their interpretation of the law, Francisco will offer consultation and direction to Natalie with the process of dealing with PCTIA should PCTIA attempt to coerce Natalie into a contract for service.

...

Costs

The total amount for all services described in this contract will total \$1,500. Any additional services requested or led to for reasons as yet unforeseen will be dealt with on a case by case scenario, and billed at \$80 per hour.

9. On March 4, 2014, Mr. MacDugall cashed a \$1,500 cheque from Ms. Horscroft titled "legal fees/attorney services."
10. Over the next several months, Mr. MacDugall provided Ms. Horscroft with documents which he stated would terminate Ms. Horscroft's "contract" with PCTIA. He advised Ms. Horscroft that delivery of these documents would end all of her obligations towards PCTIA. Ms. Horscroft notarized and delivered the documents to PCTIA in accordance with Mr. MacDugall's instructions.
11. Mr. MacDugall advised Ms. Horscroft that she did not need to pay her monthly dues to PCTIA or to fulfill any of PCTIA's requirements or deadlines. Ms. Horscroft followed Mr. MacDugall's advice.
12. On April 23, 2014, PCTIA cancelled Pacific Elements' registration and on April 30, 2014 it initiated injunction proceedings against Ms. Horscroft and her business.
13. In addition to the \$1,500 she paid Mr. MacDugall, Ms. Horscroft must now incur additional legal fees to address PCTIA's petition.
14. In May 2014, Mr. MacDugall distributed an e-mail advertising presentations he was putting on for a fee:

... This Thursday, May 22, I will be presenting a short, but sweet, 2 hour intro presentation on the language of law, contract law, and status. This will be useful for anyone new to the system of law in Canada, but interested in learning more about the way our legal system works and how you can use it more effectively in your daily life. ...

15. On his website '[www.thejustlaw.com](http://www.thejustlaw.com)', Mr. MacDugall advertises a weekly series of such presentations for a fee. On the website, he states:

If you thought you had "RIGHTS", think again! So come and learn how you are government and how to enforce your property rights. Notice: These intro nights are designed to be build ups for workshops; TBA. ...

[5] The legal basis, as set out in paragraphs 16 to 22 of the Petition, is also incorporated by reference into these Reasons:

**Legal Profession Act**

16. Section 3 of the *Legal Profession Act* 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."  
*Law Society v. Gorman* 2011 BCSC 1484 at para. 2
17. Section 15(1) of the *Legal Profession Act* prohibits those who are not practicing lawyers from engaging in the "practice of law." Section 1 defines the practice of law as including, in part:
- (a) Appearing as counsel or advocate
  - (b) drawing, revising or settling...
    - (ii) a document for use in a proceeding, judicial or extrajudicial,
    - (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia,
  - ...
  - (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).
- but does not include
- (h) any of those acts if [performed by a person who is not a lawyer and not] for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, . . .
19. The courts have interpreted "giving legal advice" broadly to include advice on both substantive and procedural law.  
*Law Society v. Targosz* 2010 BCSC 969, at paras. 57 - 68
20. Section 15(4) prohibits persons from falsely representing themselves as lawyers. The courts have interpreted this section to prohibit persons from representing themselves as "counsel", "attorney" and "advocate" or other titles that connote the person is qualified or entitled to practice law.  
*Law Society v. Gorman*, at paras 34 to 38  
*Law Society v. Goodwin* 2013 BCSC 537 at para. 84
21. Sections 85(5) and (6), allow the Law Society to apply for, and the Supreme Court to grant, an injunction restraining a person from

contravening the *Legal Profession Act* if satisfied there is "reason to believe that there has been, or will be, a contravention of this Act or the rules."

22. The evidentiary threshold for obtaining an injunction under the *Legal Profession Act* is low because the injunction merely operates to prohibit breaches of the statute, which is impermissible conduct in any event. The court has interpreted "reason to believe" to mean more than a mere suspicion of a breach, but less than proof on a balance of probabilities.

*Law Society v. Gorman at para. 37*  
*Law Society v. Targosz at paras. 40 - 42*

[6] Having read the filed materials and having heard the able submissions of counsel for the petitioner, I am satisfied that the test for issuing an injunction pursuant to s. 85(6) of the *Legal Profession Act* is met. The petitioner has established that Mr. MacDugall has been giving legal advice. The evidence is thorough and complete, particularly in regard to the Horscroft complaint.

[7] I find that Mr. MacDugall, who was not a practicing lawyer, engaged in the practice of law for a fee and represented himself as a person who was qualified to perform such services, as defined in s. 1 of the *Legal Profession Act*.

[8] Therefore, there is a reason to believe that there has been a contravention of s. 15(1) of the *Legal Profession Act*. An injunction is necessary, in my view, to prohibit further breaches of the statute. I also note that there is a public interest aspect to this particular injunction, since harm was suffered in the Horscroft matter and the requested injunction is intended to prevent further breaches causing further harm.

[9] I turn now to the wording of the order in the nature of an injunction.

[10] Having been satisfied on the evidence that the tests are met, the order is as follows. Firstly, paragraph 1 of the order will adopt the wording of paragraph 1 of page 3 of the Petition, items (a) to (g) of the paragraph that begins, "The Respondent, Francisco MacDugall, until such time as he becomes a member in good standing of the Law Society be permanently prohibited and enjoined from", and

then (a) to (g) follow, and then the words "for or in the expectation of a fee, gain or reward direct or indirect, from the person for whom the acts are performed."

[11] Paragraph 2 of the order will be as follows: Until such time as he becomes a member in good standing of the Law Society, Mr. MacDugall be permanently prohibited and enjoined from representing or holding himself out as a lawyer, articulated student, student-at-law, law clerk or in any other manner that connotes he is authorized to practise law".

[12] The Law Society petitioner is also awarded its costs for these proceedings.

[13] With regard to service, so that the record is clear on this issue, the petitioner filed today an affidavit of personal service of Mr. MacDugall with the materials for today's proceeding.

[14] The affidavit of service sworn August 5, 2014 indicates that service was effected on Thursday, July 31, 2014. I raised the question as to whether it was clear on the face of the affidavit that the server, Mr. Ball, was satisfied of the identity of Mr. MacDugall. Counsel advises me that the server had a photograph of Mr. MacDugall, as he was provided a photograph of Mr. MacDugall prior to effecting service. Counsel will file a supplementary affidavit of the server to include the reference of the server to having the photograph and matching the photograph to the individual who was served, Mr. MacDugall.

[15] I am satisfied of proper service on Mr. MacDugall of the Petition set for hearing today. I reference the second affidavit of Colette Souvage to which Exhibit A is attached, which is a document prepared by Mr. MacDugall, signed by him, dated August 20, 2014, in the style of cause and with the court file number of these proceedings, and in which in paragraph 1 at the top of page 2 he references the date of this Petition, the action number, and the signature of counsel for the Law Society, and the necessity that he (meaning Mr. MacDugall) file a response.

[16] I am therefore, on the combination of the affidavit of personal service dated August 5, 2014, and Exhibit A to the second affidavit of Colette Souvage, satisfied

that Mr. MacDugall had notice of today's proceeding. The supplementary affidavit of Mr. Ball will merely complete the record.

[17] So with that, Mr. Kleisinger, the order is granted in the terms sought, with the exception of the wording given to the last two lines of paragraph 2, as we discussed.

[18] THE COURT: Is there anything else?

[19] MR. KLEISINGER: A couple of things, My Lady. First is that Mr. MacDugall's approval of the form of the order not be required.

[20] THE COURT: It is not required, yes. In light of Mr. MacDugall's non-responsiveness to the knowledge of and service of today's proceedings, I am satisfied that it is appropriate to dispense with his signature. He can be served with the order after it is entered.

[21] MR. KLEISINGER: And with respect to service, My Lady, we have had difficulty serving Mr. MacDugall. He has given us a post office box and two email addresses, and I know normally orders are only effective if there is knowledge of the order itself. So what we would like to do is get an alternative service order whereby we could serve him at the post office box he provided us and the two email addresses, the one at which he corresponded with Ms. Horscroft, and the other one that is on his website.

[22] THE COURT: Yes, there will be an order for alternative service. Now, at the bottom of the document to which I referred, Exhibit A to Ms. Souvage's second affidavit, it indicates mail service care of Post Office Box 39030 Point Grey, Vancouver. I am not aware of an address of that nature.

[23] MR. KLEISINGER: We have attempted to serve him there. I believe it's probably Point Grey Road. I could go onto my —

[24] THE COURT: But 39030 is not an address on Point Grey Road, unless there is a Point Grey mailbox.



[25] MR. KLEISINGER: We could double check that — but we have delivered — it has been refused from that address, so there might be a post office box there.

[26] THE COURT: All right, and that was one of your suggestions.

[27] MR. KLEISINGER: Yes, My Lady.

[28] THE COURT: That post office box. Yes, certainly, alternative service to that Post Office Box 39030 Point Grey, Vancouver, V6R 4P1, and then in terms of the email addresses, you mentioned two, one given to Ms. Horscroft and one on — is it his website?

[29] MR. KLEISINGER: Yes, thejustlaw.com, where he announces his sessions. There's a contact email address there.

[30] THE COURT: Yes, if you just read that for the record. That email address together with the other one, which I would also ask you to read, will be addresses for service.

[31] MR. KLEISINGER: Okay, so the first one is Francisco, which is f-r-a-n-c-i-s-c-o at i-n-o-v-a-t-i-v-o dot com, Inovativo, and the second one is contact, the word "contact", at thejustlaw.com, all one word.

[32] THE COURT: Thank you, and I have one further method to add, which will make it four. There is a fax number on his bill, Exhibit A to Ms. Souvage's second —

[33] MR. KLEISINGER: I don't wish to interrupt you, My Lady. We have attempted to serve him on that and that number doesn't work, so we could try it again. We've tried it three or four times and it just never connects, so —

[34] THE COURT: If you would try that again as that is clearly an indication that he has given.

[35] MR. KLEISINGER: Yes, My Lady.

[36] THE COURT: Yes, those four manners of alternate service collectively are deemed to be proper service of the orders granted today on Mr. MacDugall.

[37] MR. KLEISINGER: Thank you, My Lady, and the other issue is costs.

[SUBMISSIONS ON COSTS AT 3:58:33 P.M. TO 4:04:25 P.M.]

[38] THE COURT: All right. Taking the halfway mark between Scale A and Scale B, and with some quick math, it comes out very close to \$1,500, which is what I would see to be a reasonable fee for a half-day hearing on a very fair bill of costs, on which the primary focus was preparation, given that this may well have been a contested matter. So there will be fees allowed of \$1,500, on that is GST/PST, and then the disbursements as set out, \$1,509.75 total. That would be a total of \$3,009.75 plus the applicable GST/PST.

*“The Honourable Madam Justice Watchuk”*