IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v. Carlisle,* 2014 BCSC 2362

Date: 20141107
Docket: L020878
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And

Brian Carlisle personally and doing business as All Business (AB) Paralegals, Carlisle Consulting and "www.carlisleconsulting.ca"

Respondent

Before: The Honourable Madam Justice Fisher

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	M.J. Kleisinger
Appearing on his own behalf:	B. Carlisle
Place and Date of Trial/Hearing:	Vancouver, B.C. November 3-5, 2014
Place and Date of Judgment:	Vancouver, B.C. November 7, 2014

[1] **THE COURT:** In April 2002, the Law Society of British Columbia commenced a petition against Brian Carlisle seeking an injunction to prohibit him from engaging in the practice of law. Mr. Carlisle has never been a member of the Law Society. He is not a lawyer or a licenced paralegal. It was alleged at that time that Mr. Carlisle offered to prepare and file court documents in Small Claims Court for a civil proceeding and offered to appear in court in both a civil and criminal matter.

[2] On June 5, 2002, the Law Society obtained an order from this court prohibiting and permanently enjoining Mr. Carlisle from doing the following things:

> (a) appearing as counsel or advocate;
>
> (b) drawing, revising, or settling a document for use in a proceeding, judicial or extrajudicial;
>
> (c) drawing, revising, or settling a document relating in any way to proceedings under a statute of Canada or British Columbia;
>
> (d) doing any act or negotiating in any way for the settlement of or settling a claim or demand for damages;
>
> (e) giving legal advice; and
>
> (f) 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 (e) above;
>
> for or in the expectation of a fee, gain, or reward, direct or indirect, from the person from whom the acts are performed.

[3] The Law Society now seeks an order finding Mr. Carlisle to be in contempt of this order in relation to activities he engaged in primarily during the years 2013 and 2014.

[4] Mr. Carlisle did not attend the hearing of the petition in 2002 and the order gave him liberty to apply to vary the order within 30 days of service of the order. He was personally served with the injunction order and he did not apply to vary it, nor

did he file a notice of appeal. He does not dispute the fact that he received the injunction and was aware of its terms.

[5] Mr. Carlisle defends the contempt application essentially on the basis that consulting services he provided were not the unauthorized practice of law and he did not deliberately disobey the terms of the order.

The practice of law

[6] The *Legal Profession Act*, SBC 1998 c. 9 authorizes the Law Society to regulate the practice of law in British Columbia. Generally, only practicing lawyers, that is, members of the Law Society holding practicing certificates, are permitted to engage in the practice of law. The "practice of law" is defined in s. 1 of the *Act* as follows:

> "practice of law" includes
>
> (a) appearing as counsel or advocate,
>
> (b) drawing, revising or settling …
>
> (ii) a document for use in a proceeding, judicial or extrajudicial, [and] …
>
> (iv) 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) 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),
>
> 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 …

[7] The June 5, 2002 order obviously tracks this definition of the "practice of law."

[8] Giving legal advice is a term that has been interpreted broadly to include providing both procedural and substantive advice. In *The Law Society of British Columbia v. Targosz*, 2010 BCSC 969, Dardi, J. held that an express “caveat” that a person is not a lawyer or is not providing “legal advice” cannot alter the true nature of the services provided, and that the statutory definition of "practice of law" draws no distinction between procedure and substance.

Allegations giving rise to contempt

[9] Between 2002 and 2010, the Law Society received several complaints alleging that Mr. Carlisle had engaged in the unauthorized practice of law, but it took no steps to bring contempt proceedings during this period. One of those complaints was that in 2004, Mr. Carlisle provided legal advice and drafted documents for a civil proceeding.

[10] In 2013 and 2014, the Law Society conducted an investigation of Mr. Carlisle's activities. It learned that Mr. Carlisle's services were advertised on the Internet on public Facebook pages and on a website called "carlisleconsulting.ca". These services involved the preparation of documents for individuals seeking exemptions under the *Medical Marihuana Access Regulations*, SOR/2011-227 (which I will call MMAR), and the *Marihuana for Medical Purposes Regulations*, SOR/2013-119 (which I will call MMPR). Under the MMAR, individuals could be granted permits to grow and possess medical marihuana. The MMAR were to be repealed in March 2014 and replaced with the MMPR. Under the MMPR, individuals can no longer grow their own medical marihuana but are required instead to purchase it from a licenced producer. MMAR permit holders then sought exemptions from the new MMPR so that they could continue to grow their own supply of medical marihuana.

[11] The allegation against Mr. Carlisle is that he offered his services for a fee to clients wishing to make court applications for exemptions to the MMPR and held himself out as qualified to do so.

[12] In addition to these advertised services, the Law Society contacted four individuals in Ontario in respect of services provided by Mr. Carlisle and it also conducted an undercover investigation in B.C.

[13] The Law Society's undercover investigation involved a private investigator who posed as a potential client seeking Mr. Carlisle's services to apply for a MMPR exemption for a relative.

[14] The Ontario individuals alleged that Mr. Carlisle, for a fee, prepared documents for filing in the Ontario Superior Court, applying for exemptions to the MMPR.

[15] Before I discuss the evidence and the submissions, I will outline the legal principles underlying civil contempt.

Contempt

[16] The basic principles are nicely summarized by Savage J. in *Law Society v. Gorman*, 2011 BCSC 1484, at paras. 26 to 28:

> [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… 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.

[17] The notion of "deliberately" engaging in conduct requires some comment. This has been interpreted to mean that the alleged contemnor acted with intention in doing something that is prohibited by the order.

[18] In *Sabourin and Sun Group of Companies v. Laiken*, 2013 ONCA 530 (leave to appeal to SCC granted March 20, 2014), the Ontario Court of Appeal discussed the element of intention in civil contempt proceedings. Sharpe J.A. (for the court) affirmed a long line of authorities which established that intention to disobey is not an element of civil contempt. At para. 58, he referred to the case of *TG Industries Ltd. v. Williams*, 2001 NSCA 105, where many of these authorities were reviewed. At para. 17 of *TG Industries*, Cromwell J.A. (as he then was) distinguished intent in criminal law from intent in civil contempt:

> It may be helpful to remember that, in criminal law, generally speaking, the required intent relates to the accused's desire to commit an act, not to the accused's knowledge that the act is prohibited by law. For example, a person who intentionally kills another is (absent excuse or justification) guilty of murder even if unaware that intentional killing is unlawful. In other words, a person acts with criminal intent if he or she desires to commit the act and does so. … Similarly, in civil contempt, it is important to distinguish between an intentional act and knowledge that the act is prohibited. The core elements of civil contempt are knowledge of the order and the intentional commission of an act which is in fact prohibited by it. The required intention relates to the act itself, not to the disobedience; in other words, the intention to disobey, in the sense of desiring or knowingly choosing to disobey the order, is not an essential element of civil contempt.

[19] In other words being mistaken as to the legal effect of an order does not excuse disobedience of it.

[20] In a case called *Gurtins v. Goyert*, 2008 BCCA 196, our Court of Appeal stressed the importance that persons who are subject to court orders be able to readily determine their obligations and responsibilities. At para. 15:

> … They do this by having regard to what is on the face of the formal order setting out what they are required to do, or refrain from doing. As stated in *Arlidge, Eady & Smith on Contempt* … "[a]n order should be clear in its terms and should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation"…

Assessment of the Evidence

[21] In addition to affidavits filed in this proceeding, Mr. Carlisle cross-examined one of the deponents, Mr. Tim Felger, and Mr. Kleisinger cross-examined Mr. Carlisle.

[22] Mr. Carlisle does not dispute that he knew about the existence and the terms of the June 5 order. His overall submission, as I understand it, is that his conduct did not contravene the order because he did not think that it applied to court proceedings outside British Columbia and he did not offer document services for a fee to British Columbia residents. He says that any advice he provided was based on the expertise he has gained from his own personal experience applying for and obtaining exemptions under the MMAR and MMPR, and most of this was directed to applications to Health Canada, not to court. He also says that the main area in which he provides advice for a fee relates to applications under MMPR for production licences, which are not court applications.

[23] The Law Society's overall submission is that Mr. Carlisle's conduct in giving advice and preparing documents for court proceedings contravene paragraphs (b) through (f) of the June 5, 2002 order regardless of where the clients were located.

[24] I note that the June 5 order is directed to Mr. Carlisle personally, as well as to Mr. Carlisle doing business as “All Business (AB) Paralegals”. The Law Society abandoned an application to amend the style of cause to add Carlisle Consulting Inc. and carlisleconsulting.ca, as these are the vehicles more recently used by Mr. Carlisle. There is no evidence in this application that Mr. Carlisle offered or provided any services doing business as All Business (AB) Paralegals, but it is clear that the order is directed to Mr. Carlisle personally in addition to this, and I have approached the application on this basis.

1. Offering legal services for a fee

[25] There are pages and pages of postings on Mr. Carlisle's public Facebook pages on the issue of medical marihuana. Mr. Carlisle describes himself as a "Marihuana Consultant, Expert & Researcher," a "Cannabis Consultant/Expert," and a “Drug Expert/Criminologist". He represents himself as "knowledgeable & experienced with legislature/procedures; setting up & running MMPR licenced production facility" and he refers to his website, www.carlisleconsulting.ca.

[26] Mr. Carlisle's blogs in 2013 and early 2014 indicate a lot of discussion among permit holders about the impending change in the Regulations. He provides a lot of information and answers questions from individuals seeking help. He writes about his success in assisting "dozens of MMAR patients attain their court exemptions to continue their present access." Most of these posts do not offer to provide this service for a fee.

[27] However, there is a post dated September 25, 2013, which does:

> Any MMAR patients planning their own charter exemption order who may not be very civil court savvy we now offer:
>
> Document services: to Federal Crown, AG of Canada, and every other province and territory in accordance with legislation.
>
> Average rate 6 hrs x 2 days 12 hours @ 50 p/h, to review and respond to anything from defendants. Total retainer: upfront at $50 p/h X 18 hrs = $900.
>
> For any defendant response documents that required review and response:3-6 hrs & 50 p/h.
>
> URGENT ON CALL SERVICES
>
> Rates for legal on-call/urgent work, because of their technical and in depth nature we must charge 100 per hour with a minimum of 1-6 hrs per day per call.
>
> In Person Services
>
> If in the worst case you feel you need my personal attendance with filing at the registry all the court documents setting first appearance ….even perhaps attend even later at the trial, then my rates are $600 per day of court & $300 travel rate, and $250 sleeping rate and eating rate (Plus all travel costs and expenses).

[28] In January 2014, Mr. Carlisle posted information about the exemption filing deadline. Some of his posts recommended that patients who sought exemptions should retain and hire someone immediately. Other posts were more direct, offering "rush" services and advising patients to seek his services before February 15, 2014. A January 18, 2014 posting offered rush services for a fee:

> With only just over 2 months left to apply for an MMAR/MMPR COURT EXEMPTION before Mar 31, we are now offering a rush service for the next 30 days ...
>
> www.carlisleconsulting.ca …
>
> For rush service, add $500 per MMAR APP. & $125 per hour for MMPR and related consulting

> Brian Carlisle, A.A., B.A.,
>
> www.carlisleconsulting.ca

[29] A January 31, 2014 posting did not refer to fees, but provided this advice:

> We can only offer mmar patients the paperwork for civil court exemptions for another week to get order before the mmar ends. Any patient still needing one must hire us before Feb 15. Afterwards exemption order will only be available in a criminal trial after the mmar expires or with a second motion for an emergency temporary order till hearing date. We are glad to have been able to already protect dozens of expiring mmar growers from possibly criminal prosecution for the next 50 years. wwwcarlisleconsulting.ca

[30] It appears that Mr. Carlisle stopped offering these services sometime after early February 2014. There is a final post, undated, which states this:

> Having successfully assisted dozens of patients across Canada attain their own exemptions we must now end this service, as our out of pocket costs for assisting some patients have made it impractical to continue doing this service at this time.

[31] The website, carlisleconsulting.ca, describes Mr. Carlisle as an "Academic Cannabis Expert Consultant across Canada" whose clients include the Department of Justice, Crown counsel, Civil Forfeiture Program, the MMAR, the CDSA (which I understand is the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19) and MMPR licence applicants. It states that Mr. Carlisle "has acted as expert counsel in accordance with Federal, Provincial, and Municipal legislations, protocols and policies". The various services offered include "legal assistance" in addition to consulting about various aspects of cannabis research and the MMAR and MMPR programs.

[32] The Law Society submits that these postings are in violation of paragraph (f) of the June 5 order that prohibits Mr. Carlisle from offering or holding himself out in any way as being qualified or entitled to provide to a person the legal services set out in paragraphs (a) through (e). Mr. Kleisinger says that Mr. Carlisle, while not holding himself out as a lawyer, is holding himself out as someone capable of providing these services which, by definition, are legal services.

[33] Mr. Carlisle's evidence was that the only consulting services he offered for a fee were for the design, construction, and setup of a licenced commercial medical marihuana production facility under the MMPR. He testified that the postings on his Facebook pages that offer exemption and document services for a fee were not directed to British Columbia residents, and if he received any such inquiries, he would advise them to retain a lawyer. He did not think that the June 5 order applied to legal services provided outside B.C.

[34] Mr. Carlisle admitted that he drafted the postings on his Facebook pages but said that the website, carlisleconsulting.ca, was not his. He said that the website was prepared by another individual and he had no control over the contents. However, he was aware of the information in the website and was aware that the listing of “legal assistance” under services was wrong. He said that he told the person in charge about this. I understand that the website has since been taken down.

[35] In order to find Mr. Carlisle in contempt of the June 5 order on the basis of these postings, the evidence must establish that he offered to provide or held himself out as being qualified or entitled to provide legal services that included those services in paragraphs (b) or (c) of the order, that is, drawing documents for use in a judicial proceeding or relating in any way to proceedings under a statute of Canada, or paragraph (e), giving legal advice, all for or in expectation of a fee, gain or reward.

[36] I have considered Mr. Carlisle's evidence about his intention not to charge a fee for MMAR exemption applications for B.C. residents. However, there is nothing in these postings that makes such a distinction. There are postings that clearly offer Mr. Carlisle's services to prepare MMAR/MMPR court or *Charter* exemptions and to attend at the registry to file documents "or even later at the trial." There are postings that describe in some detail Mr. Carlisle's experience and ability to assist people to obtain exemptions.

[37] In my view, the postings on September 25, 2013 and January 18, 2014 establish that Mr. Carlisle offered services that are clearly prohibited in paragraphs (b) and (c) of the order, and that many of the other postings, when considered in

context, establish that he also held himself out as being qualified to do so. The postings on September 25, 2013 and January 18, 2014 clearly show that Mr. Carlisle did this at least for some applications in the expectation of receiving a fee.

[38] I have considered the postings in the context of the many, many postings and subjects of discussion, most of which do not contravene the June 5 order. However, this does not diminish the effect of the postings that expressly offer for a fee services that are clearly prohibited under the order. And despite his evidence about a lack of control over the carlisleconsulting.ca website, it contained his information and he referenced it numerous times in his postings.

2. Law Society Investigation

[39] In January 2014, the Law Society retained Raymond Viswanathan, a private investigator, to investigate the services being offered by Mr. Carlisle. In doing so, he assumed a pretext name and story involving a mother-in-law who needed access to medical marihuana. He deposed that in early February, "Colin Nathan" contacted Mr. Carlisle by email to seek his advice about obtaining an MMPR exemption.

[40] Mr. Carlisle did not respond to these emails, so "Mr. Nathan" telephoned him. He told Mr. Carlisle that he wanted assistance with an application process. Mr. Viswanathan deposed that Mr. Carlisle explained the changes to the medical marihuana regulations and the option of asking the court to grant an exemption so that a patient could access supplies in any way he or she wanted. Mr. Carlisle did not agree to prepare the documents but said he could speak with the mother-in-law over the phone to assist her with the application. "Mr. Nathan" sought an in-person meeting and asked what Mr. Carlisle's charges were. He deposed that Mr. Carlisle said that he usually charged $100 per hour and suggested he be hired for an hour or two and he could provide the advice needed.

[41] There was a meeting on February 12 at a coffee shop. Mr. Viswanathan deposed that Mr. Carlisle gave him background information about medical marihuana, the creation of the *Controlled Drugs and Substances Act* and how exemptions began, and the beneficial effects of medical marihuana. He explained

the background to the MMAR and MMPR and the new regime under the MMPR. He advised that under this, one had to file a *Charter* application to get an exemption, and opined that this law was unconstitutional. Reading from his computer, he referred to some court cases. Mr. Carlisle explained that “Mr. Nathan's” mother-in-law would first apply through her doctor to get licenced to use medical marihuana, and if she did not want to purchase from a government-approved supplier (as required under the MMPR) she would have to apply to the court for an exemption from this requirement. He described the documents that would have to be prepared and the procedure for filing them in court and serving them on the other parties. These included first a Notice of Civil Claim and then a *Charter* application, after which a court date could be obtained.

[42] When asked how much he charged, Mr. Carlisle said it would depend on how many documents he prepared. He said he would prepare all the documents and provide a list of instructions as to what to do with them. He refused to represent the mother-in-law in court, saying that this was not allowed in B.C. He eventually gave a figure of $2,000, adding that he usually worked for large companies. He accepted a payment of $150 for the advice given at the meeting and provided a receipt.

[43] After the meeting, Mr. Carlisle sent by email a “legal brief” about MMAR exemption applications which summarized two court cases. “Mr. Nathan” did not respond, and eventually Mr. Carlisle suggested it may be prudent for them to hire a lawyer.

[44] On March 2, “Mr. Nathan” wrote to Mr. Carlisle seeking assistance with a civil dispute. Mr. Carlisle refused, stating, “As we are not lawyers, we do not do legal work in BC for $. We have assisted patients facing jail after for being sick to complete documents for self-representation, but only until the March deadline.” He suggested they retain a lawyer for both matters.

[45] Mr. Carlisle says that he had no expectation of a fee when he agreed to meet with “Mr. Nathan” and was reluctant to accept the $150 at the meeting. (He was actually given $160 in cash, but the fee was supposed to be $150.) He denies that

he agreed to do legal work for him and points to his email in which he suggested they hire a lawyer. He says that he agreed to prepare the documents for an application to Health Canada for the medical marihuana permit only.

[46] It is quite apparent that the investigator was moving the conversation to topics involving legal advice. It appears to me that he was pushing Mr. Carlisle to agree to prepare all the documents he described, which included documents for court. Mr. Carlisle did finally agree to provide these services, but left the meeting with “Mr. Nathan” to decide what he wanted to do. I cannot accept Mr. Carlisle's evidence that he limited his agreement to preparing an application to Health Canada, but I appreciate that the discussion focused a lot on that part of the process. In my view, this evidence establishes that Mr. Carlisle was prepared to provide document services that included those required for a court exemption for a $2,000 fee, he gave legal advice about the *Controlled Drugs and Substances Act* and the medical marihuana regulations and how to obtain exemptions under the MMPR from the courts, and he accepted a fee of $150 for giving this advice. Both of these activities were clearly prohibited by the June 5 order.

3. Ontario complaints

[47] In October 2013, Paul Dileo of Toronto contacted Mr. Carlisle seeking advice about obtaining an exemption to the MMPR that would allow him to continue to grow his own medical marihuana under a permit he had under MMAR. He deposed that Mr. Carlisle explained that he would have to apply to court for an order and that he could prepare the application documents for him. Mr. Dileo was aware that Mr. Carlisle was not a lawyer, but had the impression from 10 or more telephone conversations that he was knowledgeable about the exemption laws. He paid Mr. Carlisle a fee of $4,000 for the preparation of the application documents.

[48] In January 2014, Spencer Wesselink of Campbellford, Ontario, contacted Mr. Carlisle with a similar request on behalf of himself and his two brothers, Kyle and Mason. He deposed that Mr. Carlisle agreed to draft their applications for a fee of $4,000 each. On January 17, 2014, Kyle Wesselink sent $12,000 to Mr. Carlisle for

three applications. On February 2, Mr. Carlisle sent the documents to Spencer by email. On February 27, Mr. Carlisle sent further documents to Spencer, including a Notice of Constitutional Question, and on March 25, corrected versions. At that time, Mr. Carlisle advised Spencer that he would no longer be assisting patients any further and they could pay a lawyer to do it when they were ready. Spencer subsequently sought a refund, but Mr. Carlisle refused.

[49] All four of these individuals deposed that there were errors in the documents which had to be corrected before they could be filed, and that they subsequently learned that the applications were unnecessary because of a case that had been filed in Federal Court. This case (*Allard v. The Queen*, 2014 FC 280*)* involved a challenge to the constitutionality of the MMPR and an application for an injunction that would require the Federal Government to maintain the current medical marihuana system pending a determination of the constitutional issue. The *Allard* case was intended to apply to all persons medically approved under the MMAR.

[50] Mr. Carlisle testified that the Wesselink brothers had first approached him to prepare an application under the MMPR to become a licenced producer and he did a lot of work for them on that before they changed their minds to seek exemptions. He was critical of these individuals and suspicious that they were not legitimate permit holders. However, he admitted that he prepared the court documents and gave advice about how to obtain an exemption. The main thrust of his defence to these allegations is that he did not understand the June 5 order to apply to documents prepared for clients in another province for courts in another province. He assumed that the Law Society's jurisdiction was limited to activities in B.C.

[51] Relying on the statement of the law in the *Laiken* decision, the Law Society submits that this does not provide Mr. Carlisle with an excuse because it is a mistake of law or a mistake of the legal effect of the order. Mr. Kleisinger referred me to several authorities that he submits support the proposition that the Law Society's jurisdiction to regulate the practice of law in British Columbia extends to work done in B.C. for clients in other jurisdictions.

[52] *Ontario College of Pharmacists v. 1724665 Ontario Inc.*, 2013 ONCA 381 confirmed the authority of the College of Pharmacists to regulate the sale of prescription drugs in Ontario to persons outside Ontario. In *B.C. (Director of Trade Practices) v. Ideal Credit Referral Services*, (1997) 31 BCLR (3d) 37 (CA), it was held that the *Trade Practices Act,* RSBC 1996 c. 457 applied to prohibit deceptive acts or practices where the consumers are outside B.C.

[53] I agree with Mr. Kleisinger that these cases have logical analogies to the authority of the Law Society to regulate the practice of law in B.C. for clients who are outside the province. I also agree that the Law Society's jurisdiction to regulate the practice of law is not restricted to activities involving only clients in B.C. However, in the context of a contempt application and in the absence of full argument, I am not prepared to make a determination as to the extent of the Law Society's jurisdiction to regulate the practice of law where the person allegedly practicing is physically located in British Columbia but is providing advice and documents for use in court proceedings in Ontario. I am not certain what position the Ontario Law Society would take about its authority to regulate the same thing. This issue requires more considered arguments than what has been presented here, particularly given the electronic age we live in. Such a determination would be necessary to assess whether Mr. Carlisle was under a mistake of law or under a mistake about the legal effect of the order.

[54] There is no question that the services Mr. Carlisle provided to these Ontario clients were the kind of services contemplated by the June 5 order, but the issue in this contempt application is whether the order on its face clearly sets out that Mr. Carlisle is prohibited from doing any of the list of activities in another province. Regardless of the Law Society's jurisdiction, I am not satisfied that the order is sufficiently clear about this and I am not prepared to make a finding of contempt in respect of these complaints given the standard of proof required.

4. 2004 Complaint

[55] The 2004 complaint was made by Tim Felger, who was cross-examined by Mr. Carlisle. The Law Society did not pursue this complaint at the time and only included evidence from Mr. Felger in response to statements in Mr. Carlisle's Application Response about one of the complainants during that earlier time period attempting to blackmail him for his meds by demanding that he do free legal work.

[56] Mr. Felger's complaint was that in 2004, Mr. Carlisle gave him legal advice and drafted a statement of claim for an action by Mr. Felger against the City of Abbotsford and the Abbotsford Police Department, an action that was eventually dismissed in 2010 due to inaction. He knew that Mr. Carlisle was not a lawyer. Mr. Felger deposed that he paid Mr. Carlisle "approximately $7,000 cash and $13,000 in marihuana product".

[57] The element of providing services for or in the expectation of a fee is essential to a finding of contempt in this circumstance. Mr. Carlisle disputed much of Mr. Felger's evidence. With respect to the payment of a fee, Mr. Felger admitted that he had no receipts but maintained his assertion.

[58] Mr. Felger also made allegations about a criminal prosecution against him for possession and cultivation of marihuana that was related to Mr. Carlisle having assigned his medical marihuana permit to him and being untruthful about the number of plants that were authorized. From this and from Mr. Carlisle's cross-examination, it was apparent to me that there is a somewhat complicated history between these two men that is unrelated to the issues before me in this application, but which impacts the basis for any exchange of money or marihuana.

[59] Given this history and the rather unusual form of payment asserted, I was not satisfied that Mr. Felger's evidence about the payment of this fee was reliable. In any event, the Law Society made no submissions about this evidence or the extent to which it relied on this complaint. Accordingly, no finding of contempt is made on the basis of this complaint.

Conclusion

[60] The existence of the June 5, 2002 order and Mr. Carlisle's knowledge of it and its terms are not in dispute. I am satisfied that the Law Society has established beyond a reasonable doubt that Mr. Carlisle was in contempt of the June 5, 2002 order in respect of the first two allegations. I will summarize the proven acts of disobedience.

[61] With respect to the postings, I have found that those on September 25, 2013 and January 18, 2014 establish that Mr. Carlisle offered services that are clearly prohibited in paragraphs (b) and (c) of the order, and that many of the other postings, when considered in context, establish that he also held himself as being qualified to do so, which is prohibited in paragraph (f). The postings on September 25, 2013 and January 18, 2014 also clearly show that Mr. Carlisle did this, at least for some applications, in the expectation of receiving a fee.

[62] With respect to the Law Society investigation, I have found that Mr. Carlisle was prepared to provide document services that included those required for a court exemption for a $2,000 fee, he gave legal advice about the *Controlled Drugs and Substances Act* and the medical marihuana regulations and how to obtain exemptions under the MMPR from the courts, and he accepted a fee of $150 for giving this advice. Both of these activities were clearly prohibited by the June 5 order.

[63] The Ontario complaints are serious ones, as they indicate that Mr. Carlisle earned fees from providing inadequate and perhaps unnecessary services. Mr. Carlisle should be aware that the Law Society's intention is to prohibit him from practicing law in this province in relation to clients wherever they are located. Although I have not found him to be in contempt in respect of these complaints due to a lack of clarity of the order itself, Mr. Carlisle must understand that he is not qualified to give legal advice or prepare documents and he should not be doing this in the expectation of a fee, gain, or reward whether for individuals in or outside British Columbia.

[64] Before hearing submissions on penalty, I want to mention the concerns expressed by Mr. Carlisle about what he called the tactics of the Law Society in conducting an investigation of him in the absence of complaints from those who obtained his services. He submitted that this indicates that there is no basis to say that the public interest was at risk due to his activities.

[65] Mr. Kleisinger explained that the Law Society only acts on complaints and that it conducted the recent investigations after receiving a complaint from a government lawyer about documents purported to have been prepared by Mr. Carlisle for a court proceeding in Ontario.

[66] I do understand Mr. Carlisle's concerns, but the Law Society has a duty to protect the public interest by regulating the practice of law and, in my opinion, it was justified in conducting an investigation into Mr. Carlisle's activities.

[67] Now, we have to deal with penalty, so I need to hear from you on that.

[SUBMISSIONS RE PENALTY]

[PROCEEDINGS ADJOURNED]
[PROCEEDINGS RECONVENED]

Penalty

[68] The Law Society seeks only a fine up to $5,000 with time to pay, and special costs, and suggests that I could bind Mr. Carlisle to a recognizance in that amount without deposit for a period of time (as was imposed in *Law Society v. Bryfogle,* 2012 BCSC 59).

[69] Mr. Carlisle says he is not doing this anymore and will not, that he did not disobey the order intentionally, and that he was always motivated to help people mostly without a fee. He says that he has no ability to pay, as he is on a disability pension, and has not worked for a long time.

[70] Rule 22-8(1) provides that the power of the court to punish for contempt of court “must be exercised by an order of committal or by imposition of a fine or both”.

Although it is written in mandatory terms, it is quite clear that the range of penalties is broad, as the court is exercising its inherent jurisdiction: see *Health Employers Assn of BC v Facilities Subsector Bargaining Assn*, 2004 BCSC 762 at para. 18.

[71] In considering the range of penalties, the cases say that the court is to take into account a number of factors that include individual and general deterrence, the seriousness of the offence, the protection of the public, the ability to pay a fine, the degree of intention in the contemptuous conduct, the past record and character of the contemnor, and whether there are previous contempts.

[72] It is clear in the evidence before me that Mr. Carlisle stopped all activities that could be considered in contravention of the June 5, 2002 order once he became aware of this application. In addition, his own posts demonstrate that he stopped offering services for exemption applications sometime after early February 2014 (for reasons apparently relating to his out-of-pocket costs, implying perhaps that he was not generally charging fees for these services, which is consistent with what he tells me).

[73] Mr. Carlisle did advise me that he is not doing any consulting until he knows precisely what he can and cannot do. This demonstrates to me that there is no need for specific deterrence. This is of primary importance given that the ultimate aim of the law of civil contempt is to secure respect for and compliance with court orders. In this sense, Mr. Carlisle has in effect purged his contempt.

[74] None of the other factors, in my view, justify the imposition of a term of imprisonment or a substantial fine. The contempt here boils down to some of Mr. Carlisle's web postings, which are not operative now, and his apparently reluctant agreement to provide services to the Law Society investigator. These are much less serious circumstances than those in cases such as *Gorman*, *The Law Society v. Lauren*, 2012 BCSC 738 and *Bryfogle,* which I have reviewed. Mr. Carlisle is in poor health and he has little financial ability. I am satisfied that his motivation was generally to help people like himself who are ill and in need of assistance. He did not reap large profits from his illegal activities.

[75] I am not going to put him on a recognizance. I find that to be much too cumbersome of a process and I do not think it is needed here. I do not think Mr. Carlisle is going to cause any further problems from what I have heard about him and my impression of him during these hearings.

[76] For these reasons, I consider a modest fine of $500 with time to pay to be an appropriate penalty.

[77] I will award special costs to the Law Society. I understand that they intend to take no steps to enforce that order unless there are any continuing problems with Mr. Carlisle's conduct and, as I said before, I do not anticipate that will occur.

[78] The entire object of this exercise, Mr. Carlisle, is that you will understand now and continue to respect and obey court orders and that you appreciate the seriousness of the matter. I have taken all of what you have said into account. I think that is a reasonable penalty. It is not a huge amount of money but I appreciate that it is probably a lot of money to you. In terms of time to pay, do you want to set a time or how do you want to do that?

[SUBMISSIONS RE TIME TO PAY FINE]

[79] THE COURT: The fine will be payable within six months of today.

[80] BRIAN CARLISLE: Thank you, My Lady.

[81] MR. KLEISINGER: My Lady, could we also add to that order that Mr. Carlisle provide the Law Society with proof that he has made that payment within the six months?

[82] THE COURT: How does he do that?

[83] MR. KLEISINGER: He would just write us a letter or show us a receipt. Otherwise, we might have to contact him.

[84] THE COURT: All right, that is fine, and you --

[85] BRIAN CARLISLE: Who do I pay it to, My Lady?

[86] MR. KLEISINGER: It is paid up at the registry, to the court.

[87] THE COURT: It is to the court.

[88] BRIAN CARLISLE: Oh, okay, thank you. Thank you.

[89] THE COURT: It is not to the Law Society.

[90] BRIAN CARLISLE: I did not know, okay, thank you.

[91] THE COURT: All right. So it is payable within six months and, upon payment, you are directed to write to the Law Society to advise them that you have done so. Is that clear?

[92] BRIAN CARLISLE: Yes, My Lady.

[93] THE COURT: Anything else?

[94] MR. KLEISINGER: Just for the dispensing with the order, it is a -- I do not know if Mr. Carlisle would be okay with the dispensing with his signature of the order.

[95] BRIAN CARLISLE: That is fine, My Lady. I do not -- that is fine.

[96] THE COURT: You do not want to sign it?

[97] BRIAN CARLISLE: It does not matter to me, My Lady. I trust the court. I do not see why --

[98] THE COURT: -- I mean you -- well, usually you draft the order and then you would send it to him for his signature.

[99] MR. KLEISINGER: Yes.

[100] THE COURT: I think considering it is contempt -- Mr. Carlisle is available. You can send it to him by email. You have his email, right?

[101] BRIAN CARLISLE: Absolutely, sure.

[102] MR. KLEISINGER: That is correct.

[103] THE COURT: Right. I think that he should sign it.

[104] MR. KLEISINGER: Okay, thank you, My Lady.

[105] THE COURT: I think it is better that way.

[106] BRIAN CARLISLE: Thank you, My Lady.

[107] THE COURT: All right. Well, thank you very much. I know this has been stressful and I hope that we do not see you again in these environs, for your sake particularly.

"Fisher J."