IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v. Parsons,* 2015 BCSC 742

Date: 20150506
Docket: S151214
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And

David Alexander Parsons doing business as CAKEHOLE-LAW.ORG also known as 'www.cakehole-law.org'

Respondent

Before: The Honourable Justice Fisher

Reasons for Judgment

Counsel for the petitioner:	M.J. Kleisinger
Self-Represented Litigant:	In Person
Place and Date of Hearing:	Vancouver, B.C. April 22, 2015
Place and Date of Judgment:	Vancouver, B.C. May 6, 2015

[1] The petitioner, the Law Society of British Columbia, seeks an order under s. 85(6) of the *Legal Profession Act*, SBC 1998, c 9 (the *Act*), to prohibit the respondent, David Parsons, from commencing, prosecuting or defending a proceeding in any court, other than representing himself as an individual party to a proceeding.

[2] Mr. Parsons is not a lawyer and is not a member of the Law Society. He has not represented himself as a lawyer, but he has provided legal assistance to others in various matters over the years. In some cases, he has appeared in court with leave of the judge presiding. None of this assistance has been provided in the expectation of a fee or reward. More recently, he has represented an individual in proceedings against the British Columbia Society for Prevention of Cruelty to Animals (SPCA), which are still ongoing. It is this matter that has caused the Law Society to bring this proceeding.

Legal Profession Act

[3] Under s. 85(5) and (6) of the *Act*, the Law Society may apply for an injunction and this court may grant one if it is satisfied that "there is reason to believe that there has been or will be a contravention" of the *Act*. The evidentiary threshold for obtaining an injunction under this provision is low. As Savage J (as he then was) acknowledged in *Law Society of British Columbia v. Gorman*, 2011 BCSC 1484 at para. 37, an injunction under s. 85 merely operates to prohibit breaches of the *Act*, which is impermissible conduct in any event.

[4] Section 15(1) of the *Act* prohibits anyone other than practising lawyers from engaging in the practice law, with the exception of individuals acting on their own behalf, articled students, and others authorized in some other way. The definition of the "practice of law" in s. 1 does not include a non-lawyer doing things such as appearing in court, preparing legal documents or giving legal advice where these are done with no expectation of receiving a fee or reward.

[5] Section 15(5) provides:

> Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court.

[6] This subsection has been interpreted to prohibit non-lawyers from conducting the overall prosecution or defence of a proceeding in court on behalf of others whether or not a fee is charged. In *Law Society of British Columbia v. Robbins*, 2011 BCSC 1310, Grauer J. considered this provision in light of its legislative history. After noting that the distinction between the practice of a barrister and a solicitor disappeared in 1955, he stated:

> [37] In my view, that historical distinction is important to the interpretation of these provisions and helps clarify the confusion to which the inelegance of the drafting has given rise. It provides the key to understanding the difference between "appearing as counsel or advocate" and other actions included in the definition of "practice of law" if done for a fee, on the one hand, and the reference in section 15(5) to commencing, prosecuting or defending a proceeding, on the other. The former, particularly including the barrister's work of appearing at a hearing as advocate for a party, do not constitute the practice of law if done for free. The latter, incorporating the litigation solicitor's practice of commencing, prosecuting and defending a proceeding, does, whether done for a fee or not. This distinction survives today in the use of the terms "solicitor" or "solicitor of record" to designate the lawyer or firm responsible for the conduct of the litigation on behalf of the party in question, and the term "counsel" to designate the lawyer who will actually appear in court on behalf of that party. The two may but need not be the same individual.
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> [38] It follows that if a person in the position of Mr. Robbins does nothing more than assist a party by appearing to speak on his or her behalf at a hearing for free, then he is not practising law and the Law Society is in no position to intervene. That person will be subject only to the court's overriding discretion, in the case of persons who are neither litigants nor lawyers, to grant or withhold a right of audience. Where, however, a person takes in hand not only advocacy or assisting in the drawing of a document, but also the overall prosecution or defence of a proceeding, as a solicitor was wont to do, then he is practising law, or at least contravening section 15(5), and the Law Society may intervene.

[7] This interpretation was followed by Bruce J. in *Law Society of British Columbia v. Bryfogle*, 2012 BCSC 59. I agree with her comments (at para. 54) that Grauer J's interpretation of s. 15 properly explains the interplay between s. 15(1), which prohibits acts that constitute the practice of law when rendered for a fee, and s. 15(5), which prohibits the conduct of a solicitor's practice by a layperson whether or not a fee is charged.

Factual background

[8] The evidence before me in this petition includes excerpts from Mr. Parsons' website 'www.cakehole-law.org' and numerous court applications, transcripts and decisions relating to matters from 2000 to 2008 in which Mr. Parsons assisted litigants or sought an audience in court on their behalf. The most pertinent evidence relates to Mr. Parsons' role representing Earl Binnersley in proceedings against the SPCA, which began in February 2014.

[9] The website, which is current, states that it is "dedicated to all those who have been victims of the criminal justice system of British Columbia Canada". It refers to Mr. Parsons' "personal war with the CRIMINAL INJUSTICE SYSTEM" and "the Criminal Conspiracies practiced by the judges and the law society of British Columbia". The sentiments expressed in this website are similar to those expressed by Mr. Parsons in his submissions in this proceeding.

Past Court proceedings

[10] From 1999 to 2008, Mr. Parsons was involved in various kinds of court proceedings that included laying criminal informations, filing various court applications, and attempting to represent clients in court.

[11] In May 2000, Mr. Parson swore a 27 count information against the Ministry of the Attorney General, the Law Society, and various lawyers and judges, alleging that they had engaged in conspiracy and contravened an Act of Parliament. After counsel for the Attorney General directed a stay of proceedings, Mr. Parsons applied for an order in the nature of mandamus to compel a Justice of the Peace to issue process in respect of this information. This application was denied by this Court on September 20, 2000 in *An Application For An Order Of Mandamus*, 2000 BCSC 1408. The reasons of Edwards J. describe the basis on which the information was sworn:

> [13] Mr. Parsons swore the information as a result of a decision of the Provincial Court made January 14, 1997 during proceedings on a criminal charge against him in file No. 05192 Western Communities Registry. Mr. Parsons, an anglophone, applied for an order under s. 530 of the *Criminal*

> *Code* that he be tried in English. He did so in order to ensure that a transcript would be available to him pursuant to s. 530.1 (g). The Provincial Court Judge ruled s. 530 did not entitle the accused to an order that he be tried in English. Her decision was upheld by this Court and the Court of Appeal.
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> [14] Mr. Parsons now argues the Provincial Court Judge was obliged by s. 530 to make the order he requested, and that her failure to do so constitutes an offence against s. 126 of the *Criminal Code*. That is the gravamen of six counts in the information naming that judge and others. A further seven counts in the information allege conspiracies under s. 465(1)(c) to commit the alleged offences under s. 126.

[12] Edwards J said this about these arguments:

> [15] The action of a judge in declining to make an order under s. 530 of the *Criminal Code*, whether right or wrong as a matter of law in a particular case, could not conceivably constitute an offence under s. 126 of the *Criminal Code* in the absence of evidence the judicial power was exercised for a corrupt purpose. The record of proceedings in file No. 05192, which is the only basis for the counts in the information which allege that offences have been committed under s. 126 and s. 465(1)(c), disclose no corrupt purpose. The Attorney General could therefore properly conclude that in the absence of any evidence to support these eleven counts they disclose no charges with any likelihood of conviction.

[13] He held that there was no basis on which this Court could properly overturn the exercise of prosecutorial discretion and concluded that the stay was valid.

[14] Mr. Parsons had laid informations before, in 1999 and 2000, both of which were stayed.

[15] Mr. Parsons has been permitted audience before the court at various times, but he has also been denied an audience before various courts. In one case, *R v L'Espinay*, he was denied an audience in both the Provincial Court (2005 BCPC 662) and the Court of Appeal (2008 BCCA 20). In both instances, the denials were based in part on Mr. Parsons' views about the courts and the justice system. The Provincial Court judge was concerned, based on statements made on his website and in court, that Mr. Parsons' involvement in the case "may not lead to proceedings being conducted in a manner that commands the respect of the community". The Court of Appeal concluded that it would not be in the interests of justice to permit Mr. Parsons to act as the appellant's agent on the appeal, stating at para. 7:

> It is evident that Mr. Parsons has his own agenda to pursue that would be inconsistent with a full, fair and effective representation of M. L'Espinay's interests on this appeal.

The Binnersley matter

[16] On January 30, 2014, the SPCA executed a search warrant on Earl Binnersley's property and removed his dog, Bandit. Bandit had been injured in a car accident some months before and had not been treated for his injuries. The SPCA constable was of the opinion that the dog was in distress and she removed him under the *Prevention of Cruelty to Animals Act*, RSBC 1996, c 372. There followed a chronology of events that involved various levels of courts and tribunals.

Application in Provincial Court

[17] On February 11, 2014, Mr. Parsons filed an application in the Provincial Court on behalf of Mr. Binnersley seeking an order for the return of the dog under s. 490 of the *Criminal Code*. This application was struck from the list on February 24, 2014. The judge stated that this was not a matter within the jurisdiction of the Provincial Court.

Private information

[18] On February 21, 2014, Mr. Parsons laid a private information recommending three charges against the SPCA constable who had removed Mr. Binnersley's dog. He alleged that the constable had forcibly entered the Binnersley premises and had assaulted Mr. Binnersley's mother and father. On May 6, 2014, Mr. Parsons appeared in Provincial Court for a process hearing, where he cross-examined witnesses and made submissions. Two of the three counts were stayed by the judge. The Crown later stayed the remaining count.

Statutory appeal and judicial review

[19] On February 28, 2014, the SPCA advised Mr. Binnersley and Mr. Parsons that it was upholding the decision to remove the dog and that there was an appeal procedure to the Farm Industry Review Board (FIRB). On March 3, 2014, Mr. Parsons filed an appeal to FIRB on behalf of Mr. Binnersley, raising numerous

issues and alleging criminal conduct by representatives of the SPCA. The appeal was heard by FIRB on March 27, 2014, with Mr. Parsons attending with Mr. Binnersley. On April 15, 2014, the appeal was dismissed.

[20] On June 16, 2014, Mr. Parsons filed a petition for judicial review of the FIRB decision. He made extensive written submissions and swore two affidavits in support of the petition. He made allegations that the respondents (the SPCA and FIRB), their employees and lawyers, had engaged in bad faith, extortion, criminal acts, theft, fraud and perjury. Mr. Binnersley confirmed that Mr. Parsons had prepared the application to the court and that he wished him to act as agent for him.

[21] The petition was heard on September 25, 2014. Mr. Parsons appeared before the court and was permitted to argue the case on behalf of Mr. Binnersley. On September 26, 2014, the petition was dismissed, with costs against Mr. Binnersley (*Binnersley v. BCSPCA*, 2014 BCSC 2338). In his reasons for judgment, Thompson J described his understanding of the petitioner's argument at para. 8:

> [8] As I understand the argument set out in the amended petition, as refined during oral submissions, the petitioner's case — stripped of gratuitous insults, unnecessary invective, and unsubstantiated attacks on the *bona fides* of BCSPCA representatives and the FIRB adjudicator — is that the FIRB decision ought to be set aside for the following reasons:
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> 1. The adjudicator erred in her interpretation of s. 11 of the *PCAA* or, in the alternative, in failing to refer a question of law in this regard to the Court for determination.
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> 2. The adjudicator erred by failing to find that the search warrant was invalid or by not deciding this issue or, in the further alternative, by failing to refer a question of law in this regard to the Court for determination.
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> 3. The adjudicator failed to conduct a fair hearing, in particular by admitting into evidence affidavits from BCSPCA personnel over the objection of the petitioner.

[22] A further hearing was held before Thompson J on October 16, 2014 to address whether FIRB had the implicit power to decide questions of law. On October 17, 2014, the judge issued supplemental reasons, confirming that it had such power and confirming the dismissal of the petition.

[23] On October 27, 2014, Mr. Binnersley filed an appeal of the decision of Thompson J. An Appeal Record filed on December 22, 2014 indicates that Mr. Parsons is the Agent for Mr. Binnersley.

Communications with the Law Society

[24] In February 2014, the Law Society received a complaint that Mr. Parsons was representing Mr. Binnersley in the proceedings against the SPCA. On September 17, 2014, it wrote to Mr. Parsons and advised him that it considered his participation in this matter to be contrary to s. 15(5) of the *Act* and sought his agreement to sign an undertaking. Mr. Parsons refused to sign an undertaking and confirmed his intention to continue to offer legal assistance to Mr. Binnersley.

[25] After the appeal of the judicial review was filed, a representative of the Law Society telephoned Mr. Binnersley and Mr. Parsons. Both confirmed that Mr. Parsons had drafted all of the appeal documents and intended to appear before the Court of Appeal on Mr. Binnersley's behalf. Mr. Parsons told the representative that he would be making *Charter* arguments and a constitutional challenge to the *Prevention of Cruelty to Animals Act*, and he alleged that Mr. Binnersley had been subjected to criminal acts by the SPCA. He also said that he would take Mr. Binnersley's case all the way to the Supreme Court of Canada if that is what was required.

Submissions

The Law Society

[26] The Law Society submitted that Mr. Parsons has taken in hand the overall prosecution of the Binnersley matter in his various applications before the Provincial Court, this Court and the Court of Appeal, which is contrary to s. 15(5) of the *Act*. It says that Mr. Parsons has taken complete control of Mr. Binnersley's litigation, as demonstrated by Mr. Parsons' own evidence that he has advised Mr. Binnersley on the substance and process of the litigation, prepared and filed all of the pleadings, court documents and arguments, corresponded with counsel and the courts, and appeared as advocate in court and made submissions.

[27] The Law Society also submitted that Mr. Parsons has not provided Mr. Binnersley with competent legal services and his involvement has complicated and protracted the proceedings, resulting in increased costs incurred by all parties, including Mr. Binnersley:

> He improperly brought proceedings in the Provincial Court to appeal the SPCA's decision. For the judicial review, Mr. Parsons swore and filed objectionable affidavits which included legal argument, inflammatory remarks and irrelevant details. By swearing such affidavits and appearing in court, Mr. Parsons appeared as both Mr. Binnersley's advocate and primary witness. Further, the court found that Mr. Parsons' pleadings included "gratuitous insults, unnecessary invective, and unsubstantiated attacks on the *bona fides* of the BCSPCA representative and the FIRB adjudicator."

[28] The Law Society says that Mr. Parsons uses the criminal process as a tool to intimidate his perceived opponents and he appears to be using Mr. Binnersley's matter as a means to promote his "personal war with the injustice system".

Mr. Parsons

[29] Mr. Parsons submitted that he has provided valuable assistance to Mr. Binnersley, who is functionally illiterate and cannot afford to hire a lawyer. He says that the Law Society is acting in its own interests by attempting to vilify him in an effort to get him out of the courts. He asserts that his advocacy over the years has forced the justice system to do what is just and proper and he is within his rights to do such things as assist litigants and bring private prosecutions. He stressed that he did not create all the documents in the Binnersley matter on his own, stating that he discussed all matters with Mr. Binnersley, who approved every document (but one). He says that Mr. Binnersley and his parents have had criminal acts committed against them and he is simply trying to get justice for them.

[30] Mr. Parsons provided additional material at the hearing (documents and authorities), much of which related to arguments he has made over the years about his interpretation of s. 530 of the *Criminal Code* and the right to be tried in English and to obtain a transcript.

[31] Mr. Parsons submitted that the Law Society has no right to restrict non-lawyers from representing litigants in court, as this disempowers those who cannot afford a lawyer, and he asserted that s. 15(5) is unconstitutional. He says that it is up to judges to determine if he has the right to appear in court and that it is not for me to speak for other judges.

[32] Mr. Parsons alleged that the Law Society is engaged in a criminal conspiracy, asserting that it is responsible for what lawyers do in the courts. He stated a belief that the law cannot be left to judges and lawyers, as they are indoctrinated to believe that the law is what the Law Society says it is.

[33] Mr. Parsons submitted that I have links to the Law Society because the Law Society has responsibility for my behaviour, and therefore I am not impartial, and that he has the right to take this application to the Federal Court "to be heard before a judge or panel that is not intertwined with the Law Society of British Columbia".

Discussion

[34] Mr. Parsons' submissions demonstrate a profound misunderstanding of our system of law, and the additional material he provided at the hearing was not pertinent to the issue here (much relating to legal issues arising some 15 years ago). His submissions also demonstrate a profound misunderstanding of the role of the Law Society in relation to judges and the courts. Judges are not members of the Law Society. The Law Society is an ordinary litigant before the court and this application is properly before me.

[35] Moreover, it is clear that this application is brought, not in the Law Society's own interests, but in the public interest. The Law Society is mandated under s. 3 of the *Act* to uphold and protect the public interest in the administration of justice by:

> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and

> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[36] This mandate includes the ability to ensure that those who are unqualified, either in terms of competence or moral standing, are not permitted to practice law: *Law Society of British Columbia v. Gorman*; *Law Society of British Columbia v. Goodwin*, 2013 BCSC 537.

[37] Given the factual background reviewed above, I have little difficulty concluding that that Mr. Parsons commenced and prosecuted the proceedings before the Provincial Court, this Court and now the Court of Appeal in the name of Mr. Binnersley, contrary to s. 15(5) of the *Act*. (While his activities included the appeal before FIRB, s. 15(5) applies only to proceedings "in any court" and the Law Society does not suggest that this extends to proceedings in administrative tribunals.) I accept that Mr. Binnersley is entitled to seek leave for Mr. Parsons to speak for him in court without contravening this section, but Mr. Parsons' activities in respect of this matter went much further than that.

[38] The evidence establishes that Mr. Parsons was the driving force behind the Binnersley litigation, regardless of his discussions with Mr. Binnersley about it. Mr. Parsons' approach to it reflects the same sentiments he expressed before me about the "injustice system" and his role in making it better. His conduct in relation to other litigation confirms that Mr. Parsons has a tendency to use litigation to promote his "personal war" with the justice system.

[39] Despite his professed understanding of the law, Mr. Parson made a relatively straightforward case unnecessarily complex. So far, the result has produced nothing for Mr. Binnersley and has necessitated increased costs for all parties. Mr. Parsons brought proceedings in Provincial Court, which had no jurisdiction to grant the remedy sought. He issued a private information against the SPCA constable, which was stayed for good reason. In the FIRB appeal, he raised issues of criminal conduct that were beyond the subject of the appeal. In the judicial review, he made submissions that included "gratuitous insults, unnecessary invective, and

unsubstantiated attacks on the *bona fides* of BCSPCA representatives and the FIRB adjudicator" according to the judge, and he appeared as both witness and advocate. Throughout, Mr. Binnersley's interests have been poorly served. Similar to the circumstances in *Robbins*, this is the sort of conduct that s. 15(5) was intended to prevent.

[40] I fully appreciate that Mr. Parsons was granted leave to appear before FIRB and this Court in the judicial review, and that it is open for Mr. Binnersley to seek the same leave before the Court of Appeal. However, that is not the conduct that the Law Society seeks to enjoin. It is Mr. Parsons' conduct in driving this litigation in all of its aspects.

[41] I also appreciate the fact that Mr. Binnersley and many others cannot afford legal services, but I agree with the sentiments expressed by Verhoven J in *Renyard v. Renyard* (November 25, 2014) New Westminster E43267 (BCSC) that the solution to the problem of access to justice is not to permit untrained, unregulated and unaccountable individuals to act as legal counsel.

Conclusion

[42] The Law Society is entitled to the order it seeks. Mr. Parsons is permanently prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court in the name of another person. This order is to be effective against Mr. Parsons whether or not he is doing business as "cakehole-law.org".

[43] This order does not prevent Mr. Parsons from

(a) appearing in court with leave of the court or assisting others to prepare documents for court on an occasional or isolated basis, provided that any such assistance is done without the expectation of any fee or reward, or

(b) representing himself in any legal proceeding.

[44] The Law Society seeks the costs of this application. Mr. Parsons also seeks costs for being forced to come to Vancouver from Quadra Island.

[45] Under Rule 4-1(9) of the *Supreme Court Civil Rules*, the costs of a proceeding must be awarded to the successful party unless the court otherwise orders. I see no basis on which to "otherwise order". The Law Society was successful in its application and it is entitled to its ordinary costs at Scale B.

"Fisher, J."