

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v.
Bryfogle*,
2015 BCSC 1338

Date: 20150611
Docket: S152905
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And

R. Charles Bryfogle

Respondent

Before: The Honourable Madam Justice Gray

Oral Reasons for Judgment

Counsel for the Petitioner:

M.J. Kleisinger

The Respondent, R. Charles Bryfogle:

In Person

Place and Date of Hearing:

Kamloops, B.C.
June 9 and 10, 2015

Place and Date of Judgment:

Kamloops, B.C.
June 11, 2015

INTRODUCTION

[1] **THE COURT:** The Law Society has petitioned for an order that Mr. Bryfogle be found in contempt of two court orders and imprisoned, fined, or both imprisoned and fined. The Law Society also petitioned for a further variation of one of the orders, the one which I will refer to as the "Amended Groberman Order". The Law Society also seeks special costs.

[2] The Law Society's petition was set for hearing here in Kamloops commencing on Tuesday, June 9, 2015. The hearing began with preliminary applications from Mr. Bryfogle which occupied about one-half day and were resolved as I will describe shortly. The hearing on the merits of the question of whether Mr. Bryfogle was in contempt proceeded for about one day. Submissions on the question of the appropriate punishment for any contempt was deferred until I made a ruling on whether Mr. Bryfogle has acted in contempt of court.

[3] The Law Society relied on 13 affidavits sworn by a total of ten individuals. Mr. Bryfogle relied on three affidavits sworn by a total of three individuals.

[4] These are my reasons for judgment on the question of whether Mr. Bryfogle should be found in contempt of court.

[5] The precise wording of the two court orders is important and I will set it out in a few moments, but I will describe the relevant terms generally here first. I will also use terms to summarize the relevant clauses. The terms are cumbersome because they are an effort to capture the most important aspects of the term in question.

[6] The first order was made by Mr. Justice Groberman on June 9, 2006. That order has been amended twice, and I refer to it in its present form as the Amended Groberman Order. It includes two of the relevant terms. I refer to the first term as the "Suing for Another Without Leave" injunction. The relevant term forbids Mr. Bryfogle from commencing, prosecuting, or defending a proceeding in any court on behalf of someone else without leave of the court. It applies whether or not Mr. Bryfogle has any expectation of a fee.

[7] I refer to the second relevant term as the "Give Notice of Involvement for Another" provision. That term requires Mr. Bryfogle to inform a committee of the Law Society of any proceeding or legal matter in which Mr. Bryfogle is involved in any manner whatsoever, with the exception of acting on his own behalf.

[8] The second order was made by Mr. Justice Meiklem and it is commonly called a "vexatious litigant order". It provides that Mr. Bryfogle is restrained from commencing lawsuits on his own behalf without leave of the court, and I refer to it as the "Suing for Self Without Leave" injunction.

[9] During submissions, Mr. Kleisinger, counsel for the Law Society, limited the allegations of contempt to nine matters. The petition had raised further allegations which were abandoned. Of the nine allegations which the Law Society relies upon, six allege breach of the Give Notice of Involvement for Another provision, two allege breach of the Suing for Self Without Leave injunction, and one alleges breach of the Suing for Another Without Leave injunction.

[10] Also during submissions, the parties agreed to add a term to the Amended Groberman Order. I set out the agreed term in a few moments, which I call the "Give Notice of Involvement for Self" provision. With that agreement, the Law Society abandoned its other claims for variation of the Amended Groberman Order.

[11] I begin by confirming the orders made on the preliminary applications and setting out the Give Notice of Involvement for Self provision. I then set out the facts, including the relevant terms of the orders. The facts relating to most of the Law Society's allegations span lengthy time periods, some of which overlap. As a result, I set out the facts relating to each alleged act of contempt rather than chronologically. I then set out the applicable law and my analysis.

PRELIMINARY ORDERS AND AGREED ADDITIONAL TERM

[12] One of Mr. Bryfogle's preliminary applications was for an order to cross-examine some of the deponents of affidavits filed by the Law Society. During

submissions, Mr. Bryfogle and Law Society counsel Mr. Kleisinger agreed that the court would not consider the following three passages in affidavits:

- a) paragraph 29 of the Cherie Carter Affidavit #1;
- b) the words which follow "I also brought this letter to the attention of the Law Society's Unauthorized Practice Counsel" in paragraph 16 of the Julie M.M. Dufour Affidavit #1; and
- c) the first sentence of paragraph 21 of the Rene Messier Affidavit #1.

[13] With those affidavit deletions confirmed, Mr. Bryfogle abandoned his application for cross-examination of deponents on their affidavits.

[14] Mr. Bryfogle initially objected to the admissibility of four affidavits which the Law Society filed on May 27, 2015. The Law Society argued that it was entitled to rely on those affidavits because of a consent order dated May 25, 2015, which included the term that:

The Law Society may file and serve additional affidavits to be relied upon at the hearing, but must do so on or before May 27, 2015.

[15] Mr. Bryfogle agreed that the Law Society was entitled to file further affidavits, but he objected to the Law Society expanding the allegations beyond what was set out in the petition. Mr. Kleisinger confirmed on behalf of the Law Society that it was not alleging any new breaches of the orders in question.

[16] Mr. Bryfogle withdrew his objection to the Poulin Affidavit #2, which simply described exhibits which had been attached to the Poulin Affidavit #1, but in error had not been described in that affidavit.

[17] Mr. Kleisinger advised that the Law Society was not alleging that the Charlene Le Beau Affidavit #1 was offered to prove that Mr. Bryfogle breached either of the orders. Mr. Kleisinger advised that the Le Beau Affidavit #1 was offered only with respect to the Law Society's application for a further variation of the Amended Groberman Order. Mr. Bryfogle withdrew his objection to that affidavit on that basis.

[18] I ruled that the Carter #2 Affidavit was admissible in its entirety. I ruled the Souvage #2 Affidavit was admissible up to page 48, but initially I deferred ruling on the admissibility of the exhibits at pages 49 through 57. Later in the hearing, the Law Society abandoned the allegation to which pages 49 through 57 related. Those pages are therefore irrelevant, and as a result I hereby rule that pages 49 through 57 of the Souvage Affidavit #2 are not admitted into evidence.

[19] Mr. Bryfogle also applied for an order for further particulars of how he had allegedly breached the orders. I dismissed that application.

[20] Mr. Bryfogle raised a number of concerns which he suggested could be resolved through preliminary rulings. During the course of his submissions, I pointed out ways in which Mr. Bryfogle's arguments instead addressed the merits of the case and which he could argue on the hearing of the petition. Mr. Bryfogle did not pursue such applications any further.

[21] The Give Notice of Involvement for Self provision which the parties have agreed upon as a further variation of the Amended Groberman Order is as follows:

That Mr. Bryfogle must inform the Unauthorized Practice Committee of the Law Society of any legal proceeding, including proceedings before administrative tribunals, to which he is a party.

FACTS

[22] Mr. Bryfogle is not a lawyer and has never been a lawyer. Mr. Justice Groberman, then of the Supreme Court, pronounced an order on June 9, 2006. The reasons for judgment are indexed at 2006 BCSC 1092. The order was varied by the order of Mr. Justice Goepel, then of the Supreme Court, pronounced July 25, 2006, simply to correct the date of the order. I refer to the order with the date corrected as the "Original Groberman Order".

[23] On April 2, 2007, Mr. Justice Meiklem pronounced the order which I term the "Meiklem Order". Mr. Justice Meiklem's reasons for judgment are indexed at 2007 BCSC 457. The Meiklem Order declared Mr. Bryfogle to be a vexatious litigant and

ordered that he "must not, without leave of the court, institute any legal proceedings in any court". That is what I have termed the Suing for Self Without Leave injunction.

[24] At paragraph 42 of his reasons for judgment Mr. Justice Meiklem wrote as follows:

I should also say at this point that I interpret "legal proceedings" as including interlocutory applications which raise a new matter or cause ...

[25] Mr. Bryfogle appealed the Original Groberman Order. The appeal was dismissed on October 24, 2007. The reasons for judgment are indexed at 2007 BCCA 511.

[26] Mr. Bryfogle appealed the Meiklem Order. The appeal was dismissed on June 5, 2009. The reasons for judgment are indexed at 2009 BCCA 256.

[27] On January 17, 2012, Madam Justice Bruce found Mr. Bryfogle in contempt of the Original Groberman Order for failing to advise the Law Society of his involvement in various legal matters and for drafting a trust document. She placed Mr. Bryfogle on a recognizance for one year. She also varied the Original Groberman Order to change the party to which Mr. Bryfogle must give notice pursuant to the Give Notice of Involvement for Another provision. I refer to the order with that amendment as the Amended Groberman Order.

[28] Madam Justice Bruce's reasons for judgment are indexed at 2012 BCSC 59. She wrote as follows at paragraph 78:

I am satisfied beyond a reasonable doubt that Mr. Bryfogle intentionally violated the [Original Groberman] Order by failing to notify the Law Society of his involvement in Ms. Holland's various actions. While Mr. Bryfogle may have been unaware that his actions constituted "prosecution", he could not have been mistaken about the duty to report his actions to the Law Society. Any involvement whatsoever must be reported to the Law Society. There is no qualification as to the extent or nature of his involvement. Mr. Bryfogle was clearly aware of the obligation to notify the Law Society even when his participation in an action was minimal ... Mr. Bryfogle argued that the Law Society never took any steps to warn him about becoming involved in an action without complying with the notification requirement in the Order. However, unless opposing counsel brought the matter to the attention of the Law Society, it would only be through notification by Mr. Bryfogle that the Law

Society would become aware of his actions or his intention to become involved in litigation. This was obviously the intention behind the notification term of the [Original Groberman] Order.

[29] The Amended Groberman Order is as follows:

1. THIS COURT ORDERS that the Respondent, R. Charles Bryfogle, until such time as he becomes a member in good standing of the Law Society of British Columbia be 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 will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person;
 - (d) drawing, revising or settling a document relating in any way to proceedings under a statute of Canada or British Columbia;
 - (e) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
 - (f) giving legal advice;
 - (g) 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 (f) above;

for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed;

2. THIS COURT FURTHER ORDERS that the Respondent be prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court in his own name or in the name of another person, without leave of the court, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf;
3. THIS COURT FURTHER ORDERS that the Respondent be prohibited and enjoined from acting as attorney or advocate on behalf of any party pursuant to the *Court Agent Act*, R.S.B.C. 1996, c 76;
4. THIS COURT FURTHER ORDERS that the Respondent be required to inform the Unauthorized Practice Committee of the Law Society of British Columbia of any proceeding or legal matter in which he is involved in any manner whatsoever, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf;
5. THIS COURT FURTHER ORDERS that the approval of the Respondent to the form of the Order be dispensed with; and
6. THIS COURT FURTHER ORDERS AND BY CONSENT that the Petitioner be awarded its costs fixed in the amount of \$2,000.00

[30] It will be seen that paragraph 2 of the Amended Groberman Order is the Suing for Another Without Leave injunction, and paragraph 4 is the Give Notice of Involvement for Another provision.

(a) Allegation #1 - Alleged breach of Suing for Self Without Leave injunction in *Bryfogle v. Law Society and Olthuis*

[31] On December 31, 2014, Mr. Bryfogle commenced a claim in this court, Kamloops Registry No. 050991, against the Law Society and "Brent Olthuis (Hunter Litigation) Agent". Mr. Bryfogle did not have leave from the court to commence this lawsuit.

[32] Part 1, statement of facts, paragraph 10, of Mr. Bryfogle's notice of civil claim states:

In one proceeding, Plaintiff was deemed a vexatious litigant and barred from filing a complaint without leave of a court. Plaintiff in two proceedings been [sic] allowed, by the BCSC and BCCA, to file a complaint without notice to the BCLS or seeking leave of the court. This conflict of rulings warrants direction from the court.

[33] The relief Mr. Bryfogle sought included an order that the Law Society and Mr. Olthuis be enjoined from bringing certain actions against Mr. Bryfogle without permission of the court, an order that the Law Society and Mr. Olthuis be subject to liability for damages in certain circumstances, an order "determining the conflict between the orders" of several judges, and other claims.

[34] The Law Society and Mr. Olthuis filed a notice of application on January 15, 2015, and an amended notice of application on February 19, 2015, seeking orders, including an order that Mr. Bryfogle's notice of civil claim be declared a nullity. Mr. Bryfogle filed a seven-page application response opposing that relief. By order pronounced March 9, 2015, on the court's own motion, Associate Chief Justice Cullen declared Mr. Bryfogle's notice of civil claim to be a nullity and set it aside.

[35] Mr. Bryfogle appealed the order of Associate Chief Justice Cullen. Mr. Bryfogle appeared before Mr. Justice Tysoe of the Court of Appeal on April 17,

2015. I assume that appearance was on an application seeking leave to appeal. At that time, Mr. Bryfogle abandoned his appeal.

[36] The Law Society sent Mr. Bryfogle a letter dated April 20, 2015, which included the following:

We confirm your intention to seek leave of the Supreme Court to institute proceedings against the Law Society. The Associate Chief Justice's order did not dismiss your claim, but rather set it aside as a nullity because you initiated that claim contrary to a court order. As the order did not dismiss your action on the merits, the Law Society will not take the position that the Associate Chief Justice's order and your abandoned appeal of that order prohibit you from seeking leave to initiate proceedings in the Supreme Court. That said, the Law Society reserves its right to oppose to [sic] your application for leave.

(b) Allegation #2 - Alleged breach of Give Notice of Involvement for Another provision in Employment Standards Claim, *Hegedus c.b.a. Playtime v. Elias*

[37] In 2014, Mr. Bryfogle and his then-wife, Ms. Hegedus, now known as Ms. Holland, operated a childcare facility known as Playtime Childcare Centers ("Playtime"). I refer to her as Ms. Hegedus in these reasons for judgment for simplicity, because many of the documents use that name.

[38] Mr. Bryfogle was Playtime's business manager from 2012 to 2014. He was also the "primary investor" but not owner. Ms. Hegedus was Playtime's "primary owner".

[39] Mr. Bryfogle terminated the employment of a Playtime employee named Ms. Elias. She made a complaint to the Employment Standards Branch about a number of matters relating to what she was paid in her employment.

[40] Mr. Bryfogle corresponded with the Employment Standards Branch about Ms. Elias's claim in a letter dated July 23, 2014, and in two letters each dated September 1, 2014. Mr. Bryfogle also appeared at the hearing on October 15, 2014, of the merits of Ms. Elias's claims. Mr. Bryfogle appeared on behalf of Ms. Hegedus carrying on business as Playtime.

[41] Mr. Bryfogle did not give notice to the Law Society about those steps.

(c) Allegation #3 - Alleged breach of Suing for Self Without Leave injunction in "*Bryfogle, Manager, Playtime*" v. *Elias*

[42] Mr. Bryfogle commenced a Small Claims Court proceeding, Williams Lake No. 14-1386, in which the claimant's name is described as "R. Charles Bryfogle, Manager, Playtime Childcare Centers". It makes a claim against Ms. Elias for \$23,300, alleging that Ms. Elias caused harm to children and to Playtime.

Mr. Bryfogle did not obtain leave of the court prior to commencing that lawsuit.

[43] Mr. Bryfogle attended a settlement conference in this proceeding on February 3, 2015.

[44] Ms. Hegedus deposed that she is continuing this case on her own as "primary owner" of Playtime.

(d) Allegation #4 - Alleged breach of Suing for Another Without Leave injunction in *Bryfogle, Manager, Playtime v. Elias*

[45] This allegation relies on the same facts as Allegation #3. The Law Society argued that by suing in the name "Bryfogle, Manager, Playtime", when Playtime was owned by Ms. Hegedus, Mr. Bryfogle was acting on behalf of another, being Ms. Hegedus.

(e) Allegation #5 - Alleged breach of Give Notice of Involvement for Another provision in *Bryfogle, Manager, Playtime v. Elias*

[46] This allegation relies on the same facts as Allegations #3 and #4. Again, the Law Society argued that Mr. Bryfogle was acting on behalf of Ms. Hegedus and should have given the Law Society notice of his involvement.

(f) Allegation #6 - Alleged breach of Give Notice of Involvement for Another provision in criminal proceedings against Ms. Hegedus

[47] On May 7, 2014, the Provincial Court in Williams Lake issued an interim ex parte protective intervention order, including the term that Ms. Hegedus and

Mr. Bryfogle are prohibited from contacting or interfering with a particular child who I will simply term the "Child".

[48] In October 2014, Ms. Hegedus was charged with offences under ss. 281 and 215(2)(b) of the *Criminal Code*, R.S.C. 1985, c. C-46, alleging that she abducted a child under the age of 14 years and that she endangered the life of a child. The charges related to the person I have termed the "Child". Mr. Bryfogle is neither an accused nor a Crown witness regarding those charges.

[49] On October 29, 2014, Mr. Bryfogle appeared before Her Honour Judge Church of the Provincial Court and indicated, through Ms. Hegedus' counsel, that he wished to give evidence in response to the Crown's application regarding the terms of Ms. Hegedus' release.

[50] Mr. Bryfogle wrote a letter to Crown counsel Ms. Dufour dated November 5, 2014. The letter alleges that Ms. Dufour made statements about Mr. Bryfogle's conduct in connection with the protective intervention order.

[51] Mr. Bryfogle signed a form of application to a judge dated November 19, 2014, seeking a hearing regarding the allegations against him.

[52] Mr. Bryfogle stated during the hearing of the petition on June 10, 2015, that he anticipated that he might be called as a defence witness in the criminal proceedings against Ms. Hegedus. Mr. Kleisinger confirmed that Mr. Bryfogle gave sufficient notice to the Law Society about that.

(g) Allegation #7 - Alleged breach of Give Notice of Involvement for Another provision in Federal Court proceedings involving Ms. Hegedus

[53] At some time before June 24, 2010, Ms. Hegedus applied in the Supreme Court of British Columbia for an order permitting her to represent her son, Mr. Holland, in a lawsuit on the basis that Mr. Holland was disabled. The B.C. Supreme Court dismissed her application on the basis that Ms. Hegedus had not

established that Mr. Holland was disabled. The B.C. Court of Appeal upheld that decision.

[54] Mr. Bryfogle, Ms. Hegedus, and Mr. Holland signed a letter dated June 24, 2010, addressed to the Canadian Human Rights Commission, which I will refer to as "CHRC". This letter included a form of complaint against parties including judges and lawyers involved in the decisions that Ms. Hegedus could not represent Mr. Holland in B.C. Supreme Court.

[55] On July 14, 2010, the CHRC wrote Mr. Holland care of Ms. Hegedus. The letter includes the statements that:

Your inquiry concerns the decision of a court, which is independent of the [CHRC]. As a result, the [CHRC] is unable to assist you. If you disagree with the court's decision, you may wish to consult a lawyer about the possibility of an appeal or review of the decision.

[56] It is not necessary to detail all the proceedings in the Federal Court Trial Division and the Federal Court of Appeal, other than to say that they all relate to this CHRC decision.

[57] Mr. Bryfogle signed a three-page document dated April 26, 2011, entitled "Notice of Constitutional Question" in Federal Court Trial Division File No. T-1332-10. Mr. Bryfogle signed a document dated June 8, 2011, to the Federal Court Registry referring to the same file number and requesting a hearing.

[58] Mr. Bryfogle sent letters to the CHRC bearing these dates: June 12, 2011; July 31, 2011; November 29, 2013; December 2, 2013; January 10, 2014; March 17, 2014; March 31, 2014; and April 21, 2014. These related to either the Federal Court Trial Division matter or to Federal Court of Appeal No. A-141-14.

[59] Mr. Bryfogle sent a letter to the Federal Court Registry dated June 12, 2011. He also signed documents entitled "Affirmation of Service", or a similar title, bearing these dates: November 19, 2013; November 26, 2013; December 1, 2013; January 8, 2014; January 28, 2014; and March 17, 2014.

[60] Mr. Bryfogle did not inform the Law Society that he had any involvement in the Federal Court proceedings involving Ms. Hegedus.

(h) Allegation #8 - Alleged breach of Give Notice of Involvement for Another provision in *Janzen-Bryfogle v. Janzen*

[61] Ms. Janzen-Bryfogle is Mr. Bryfogle's wife. They first met in 2014. About six years before Ms. Janzen-Bryfogle met Mr. Bryfogle, she filed a notice of claim in the Kamloops Registry of the Provincial Court of B.C., Small Claims Court, File No. 37266. She claimed that her daughter wrongfully withdrew \$10,000 from a joint account.

[62] Mr. Bryfogle executed a certificate of service dated September 25, 2014, in which he deposed that he served Ms. Janzen-Bryfogle's daughter with documents, including an application to a judge. Mr. Bryfogle did not advise the Law Society that he had any involvement in *Janzen-Bryfogle v. Janzen*.

(i) Allegation #9 - Alleged breach of Give Notice of Involvement for Another provision in *Messier v. Messier* divorce proceedings

[63] Mr. Rene Messier and Ms. Joanne Messier were parties to divorce proceedings in file No. 42532 in the Kamloops Registry of the B.C. Supreme Court. They were divorced by the order of Mr. Justice Groves pronounced on August 19, 2013, but not entered. The order provided that Mr. Messier must pay monthly spousal support of \$650 to Ms. Messier. The order dismissed Ms. Messier's claim for child support, and the order also set out division of assets.

[64] Both of the Messiers are now discharged bankrupts. Mr. Messier was in bankruptcy over the period May 2012 through May 2014, and Ms. Messier was in bankruptcy over the period from November 23, 2011 until August 2012.

[65] Mr. Messier wanted to obtain an entered divorce order. Ultimately, Ms. Messier wanted to set aside the order, apparently seeking to increase what she was entitled to receive under the order.

[66] Mr. Bryfogle signed a letter agreement dated August 28, 2014, with Ms. Messier. The agreement makes a reference to the bankruptcy proceedings of each of the Messiers and also to the Messier divorce proceeding. It states:

It is my understanding you will be preparing a report for the court in Kamloops [divorce] and for Ms. Clarke [your bankruptcy] and the trustee in Alberta [Rene's bankruptcy].

[Square brackets in original.]

[67] It also states:

I will undertake these duties to whatever extent the court allows me to act as agent before the divorce court ...

[68] Mr. Bryfogle wrote a letter dated August 15, 2014, to Mr. Messier's former trustee in bankruptcy. Mr. Bryfogle wrote:

I was engaged by Joanne Messier to undertaking a forensic audit for her divorce filed in the Kamloops Registry.

[69] The letter also says:

I am preparing a report for the BC Supreme Court.

[70] Mr. Bryfogle wrote a letter dated August 25, 2014, to the former trustees for both Mr. and Ms. Messier in which Mr. Bryfogle wrote:

When I complete the interim "205" for use in the divorce, I will send to both of you the preliminary report set in format suitable for presentation to the Court.

[71] Mr. Bryfogle sent Mr. Messier an email dated September 2, 2014. In that email, Mr. Bryfogle says:

I will be filing a "205" Report in the divorce, and at the appropriate time, deliver a copy to your trustee. I suggest you to ask your trustee what a "205" is. A court in BC and another court in AB will need to address what I have found.

[72] Mr. Bryfogle sent Mr. Messier an email dated September 4, 2014. That email includes the following:

The options are as follows: [1] send the money by 5 PM Friday or [2] Joanne will go to court and in shortened time ask for an order to find you in contempt

of court on Monday. An application to have you found in contempt will be filed Monday morning if the money is not received by Friday.

[73] Mr. Bryfogle wrote a letter dated September 5, 2014, to the two trustees in which he wrote:

As noted previously, my "205" Report will be sent to you after it is filed in the BCSC in the divorce.

[74] Mr. Bryfogle signed a notice to produce dated September 8, 2014, which has the style of cause of the Messier divorce proceeding. Mr. Bryfogle sent further emails to Mr. Messier on September 8 and 11, 2014, in which he advises about an application and documentation.

[75] Ms. Messier applied to have the unentered final divorce order vacated. Ms. Messier's application proceeded before Madam Justice Hyslop on September 29, 2014. Mr. Bryfogle was present in the courtroom during the hearing of that application. He says he was present in case the judge had any questions about his alleged "forensic audit".

[76] Justice Hyslop's oral reasons for judgment state that the basis of Ms. Messier's claim was an alleged forensic audit prepared by Mr. Bryfogle. Justice Hyslop said as follows in paragraph 16:

The auditor's report prepared by Mr. Bryfogle, in my opinion, is thinly disguised legal advice to Ms. Messier. Further, the e-mails exchanged between Mr. Bryfogle and Mr. Messier make it clear that Mr. Bryfogle is acting as an advocate for Ms. Messier in this application. However, whether Mr. Bryfogle is acting in contravention to the order of Mr. Justice Groberman is not for me to decide.

LAW AND ANALYSIS

[77] To establish the contempt alleged, the Law Society must prove beyond a reasonable doubt that Mr. Bryfogle knew of the applicable terms of the order and that Mr. Bryfogle deliberately engaged in conduct that disobeyed those terms of the orders. This was discussed in the recent Supreme Court of Canada decision in *Carey v. Laiken*, 2015 SCC 17 at para. 38, as follows:

It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice ... The Court of Appeal followed this approach. As it noted, to require a contemnor to have intended to disobey the order would put the test “too high” and result in “mistakes of law [becoming] a defence to an allegation of civil contempt but not to a murder charge” (2013 ONCA 530, at para. 59). Instead, contumacy or lack thereof goes to the penalty to be imposed following a finding of contempt ...

[78] If there is any ambiguity in the orders, it is for the benefit of Mr. Bryfogle. See *Law Society of British Columbia v. Gorman*, 2011 BCSC 1484 at paras. 27-28, and *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 14.

[79] I will now go through each allegation of contempt.

(a) Allegation #1 - Alleged breach of Suing for Self Without Leave injunction in *Bryfogle v. Law Society and Olthuis*

[80] Mr. Bryfogle commenced a claim in this court without leave. Mr. Bryfogle concedes that this was in breach of the Suing for Self Without Leave injunction. He argued that he purged the contempt because the matter is no longer proceeding.

[81] As stated, the Suing for Self Without Leave injunction provides that Mr. Bryfogle "must not, without leave of the court, institute any legal proceedings in any court".

[82] Mr. Bryfogle breached the Suing for Self Without Leave injunction when he commenced this proceeding. This was a lawsuit which not only involved the Law Society, but in which Mr. Bryfogle sued Mr. Olthuis personally. Mr. Bryfogle did not abandon this lawsuit when the error was pointed out to him. In fact, he filed a seven-page application response opposing the Law Society's position, and then he appealed the order of Associate Chief Justice Cullen declaring the proceeding to be a nullity. While the matter has now been resolved, Mr. Bryfogle acted in contempt of the Suing for Self Without Leave injunction when he commenced this claim.

[83] The Law Society has established Allegation #1 beyond a reasonable doubt. Mr. Bryfogle's contempt has not been purged by the court's declaration of nullity or the abandonment of the appeal of that declaration.

(b) Allegation #2 - Alleged breach of Give Notice of Involvement for Another provision in Employment Standards Claim, *Hegedus carrying on business as Playtime v. Elias*

[84] As stated, the Give Notice of Involvement for Another provision provides as follows:

[Mr. Bryfogle] be required to inform the Law Society's Unauthorized Practice Committee of any proceeding or legal matter in which he is involved in any manner whatsoever, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf.

[85] This is a very broad term. It applies not only to proceedings, but to any "legal matter". It applies when Mr. Bryfogle is involved "in any manner whatsoever".

[86] The Employment Standards proceeding is a legal matter. Mr. Bryfogle was involved, even to the point of representing the employer at the Employment Standards hearing. Mr. Bryfogle essentially argued that he was acting for himself, and so the Give Notice of Involvement for Another provision does not apply.

[87] As stated, the provision applies "other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf." Mr. Bryfogle's conduct does not fall within that exception. First, the Employment Standards proceedings were in the name of Ms. Hegedus and Playtime. Second, Ms. Hegedus was a "primary owner" of Playtime.

[88] The Law Society has established Allegation #2 beyond a reasonable doubt.

(c) Allegation #3 - Alleged breach of Suing for Self Without Leave injunction in *Bryfogle, Manager, Playtime v. Elias*

[89] Mr. Bryfogle commenced this Provincial Court claim without leave. Mr. Bryfogle concedes that doing this was in breach of the Suing for Self Without

Leave injunction. He argued that he purged the contempt because he is no longer pursuing the matter. Ms. Hegedus says she is pursuing it.

[90] Mr. Bryfogle also suggested that he might have been confused about whether the Suing for Self Without Leave injunction applied to Provincial Court proceedings. As stated, the Suing for Self Without Leave injunction provides that Mr. Bryfogle "must not, without leave of the court, institute any legal proceedings in any court".

[91] The reference to "any" court clearly includes the Provincial Court of B.C. Mr. Bryfogle has not purged the contempt by leaving the case to be pursued by Ms. Hegedus.

[92] The Law Society has established Allegation #3 beyond a reasonable doubt.

(d) Allegation #4 - Alleged breach of Suing for Another Without Leave injunction in *Bryfogle, Manager, Playtime v. Elias*

[93] As stated, the Suing for Another Without Leave injunction is as follows:

[Mr. Bryfogle] be prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court in his own name or in the name of another person, without leave of the court, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf.

[94] The Law Society argued that by suing in the name "Bryfogle, Manager, Playtime", when Playtime was owned by Ms. Hegedus, Mr. Bryfogle was acting on behalf of another, being Ms. Hegedus in her capacity of her proprietorship.

[95] The name of the claimant in this Provincial Court matter does not make sense. If Mr. Bryfogle was suing personally, it was unnecessary for him to add the words "Manager, Playtime" to the name of the claimant. If he intended to sue on behalf of Playtime, a proprietorship, he should have sued in the name of Ms. Hegedus carrying on business as Playtime.

[96] It is apparent that Mr. Bryfogle intended to sue on behalf of Playtime, being Ms. Hegedus' proprietorship. The Provincial Court proceeding therefore was not

"representing himself as an individual party to a proceeding acting without counsel solely on his own behalf".

[97] In these circumstances, Mr. Bryfogle was in breach of the Suing for Another Without Leave injunction. The Law Society has established Allegation #4 beyond a reasonable doubt.

(e) Allegation #5 - Alleged breach of Give Notice of Involvement for Another provision in *Bryfogle, Manager, Playtime v. Elias*

[98] This allegation relies on the same facts as Allegations #3 and #4. The Law Society argued that Mr. Bryfogle was acting on behalf of Ms. Hegedus and should have given the Law Society notice of his involvement. As stated, Mr. Bryfogle was acting on behalf of Ms. Hegedus carrying on business as Playtime.

[99] Mr. Bryfogle pursued this claim and was certainly "involved". It does not fall within the exception for "representing himself as an individual party to a proceeding acting without counsel solely on his own behalf".

[100] The Law Society has established Allegation #5 beyond a reasonable doubt.

(f) Allegation #6 - Alleged breach of Give Notice of Involvement for Another provision in criminal proceedings against Ms. Hegedus

[101] The Law Society argued that Mr. Bryfogle became involved in the criminal proceedings against Ms. Hegedus and therefore ought to have given notice.

[102] Mr. Bryfogle argued that any involvement was on his own behalf, except for some possible future involvement as a witness for the defence. Mr. Bryfogle took some steps in the criminal proceedings which related to concerns about allegations against Mr. Bryfogle personally. In my view, those steps do fall within the exception for "representing himself as an individual party to a proceeding acting without counsel solely on his own behalf".

[103] Although he was not a party to the criminal proceedings in the sense of being an accused, the steps Mr. Bryfogle took relate to the suggestion that he might

become a party. In any event, the facts are sufficiently ambiguous on this that I am not satisfied beyond a reasonable doubt that those steps were in contempt of the order.

[104] Steps taken by Mr. Bryfogle as an anticipated witness in the criminal proceedings against Ms. Hegedus fall within the broad language of being involved "in any manner whatsoever". In my view, once Mr. Bryfogle anticipates that he may be a witness in a proceeding or a legal matter, such as by being so advised or receiving a subpoena, his obligation to inform the Law Society is triggered. Mr. Bryfogle stated during the hearing of the petition on June 10, 2015, that he now anticipates that he may be a defence witness, and Mr. Kleisinger confirmed that Mr. Bryfogle had given sufficient notice to the Law Society about that.

[105] I am not satisfied beyond a reasonable doubt that Mr. Bryfogle has breached the existing orders as alleged in Allegation #6.

(g) Allegation #7 - Alleged breach of Give Notice of Involvement for Another provision in Federal Court proceedings involving Ms. Hegedus

[106] Mr. Bryfogle's position is that his only involvement in the Federal Court proceedings involving Ms. Hegedus was so minor that reporting was not required. He argued that simply serving documents does not mean that he was involved.

[107] The notice of constitutional question signed by Mr. Bryfogle was dated in April 2011. Since that time, the involvement of Mr. Bryfogle has been through correspondence and service of documents and execution of documentation relating to service.

[108] The wording of the Give Notice of Involvement for Another provision is so broad that it catches even relatively trivial involvement of serving documents. Such conduct falls within being "involved in any way whatsoever".

[109] While the more recent breaches involving service of documents are not particularly serious, they are still a breach of the order. The Law Society has established Allegation #7 beyond a reasonable doubt.

(h) Allegation #8 - Alleged breach of Give Notice of Involvement for Another provision in *Janzen-Bryfogle v. Janzen*

[110] As with Allegation #7, Mr. Bryfogle argued that his involvement was so trivial that it did not trigger the Give Notice of Involvement for Another provision. As with Allegation #7, Mr. Bryfogle's actions fall within the broad wording of "involved in any manner whatsoever".

[111] As with Allegation #7, while these breaches are not particularly serious, the Law Society has established Allegation #8 beyond a reasonable doubt.

(i) Allegation #9 - Alleged breach of Give Notice of Involvement for Another provision in *Messier v. Messier* divorce proceedings

[112] Mr. Bryfogle agreed that he should not have signed the notice to produce in the Messier divorce proceeding. He said that was a mistake. Mr. Bryfogle's defence to the balance of this allegation centred around his argument that he was involved in the bankruptcy proceedings rather than the divorce proceedings.

[113] Mr. Bryfogle has an argument that the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, has paramountcy over the B.C. *Legal Profession Act*, S.B.C. 1998, c. 9, with the effect that non-lawyers are permitted to do things as provided in the *Bankruptcy and Insolvency Act*. This argument was referred to in the reasons for judgment of Mr. Justice Groberman indexed at 2006 BCSC 1092. Mr. Justice Groberman referred to it in discussion at para. 48, where he said:

If this issue arises within bankruptcy proceedings, it will be up to you [meaning Mr. Bryfogle] to draw to the attention of the court the fact that this order exists and make argument as to whether it is applicable to the bankruptcy proceeding or not.

[114] Later, in discussion at para. 49, Mr. Justice Groberman said:

... whether this ruling applies in bankruptcy may depend on the particular type of bankruptcy proceeding as well, and so I am refraining from making

any ruling specifically dealing with bankruptcy. That will be up to the court or tribunal in which you seek to appear on bankruptcy matters.

[115] The issue of the extent to which Mr. Bryfogle can be involved lawfully in bankruptcy matters without breaching either the Amended Groberman Order or the Meiklem order has arisen a number of times in litigation, but I do not see anywhere that it has been finally resolved: see, for example, the reasons for judgment of Master Baker in *Bankruptcy of Kaiser*, 2007 BCSC 558.

[116] In the present case, the Law Society is not arguing that Mr. Bryfogle's involvement in the Messier bankruptcies is a breach of the applicable order, so the question is not before me for decision.

[117] Mr. Bryfogle was "involved" with the Messier divorce proceedings. His agreement with Ms. Messier and his correspondence with the trustee all refer to the divorce proceedings. They clearly show that Mr. Bryfogle anticipated that the document he called his "205 Report" would be put before the court, and in fact it was the basis of Ms. Messier's application. Mr. Bryfogle knew that this report was before the court, which is why he attended the hearing before Madam Justice Hyslop.

[118] Mr. Bryfogle was also involved in acting as a contact number for Ms. Messier and in corresponding with Mr. Messier, and his correspondence includes statements that I would characterize as advocating. I have already quoted one email where Mr. Bryfogle purports to set out options for Mr. Messier of either sending money or Ms. Messier will go to court.

[119] The Law Society has established Allegation #9 beyond a reasonable doubt.

SUMMARY

[120] In summary, the Law Society has established all of its allegations, except #6. It has established five breaches of the Give Notice of Involvement for Another provision; two breaches of the Suing for Self Without Leave injunction, being the Provincial Court matter now being pursued by Ms. Hegedus and the Supreme Court

matter which was a nullity; and one breach of the Suing for Another Without Leave injunction, being the Provincial Court matter now being pursued by Ms. Hegedus.

[121] These breaches are of varying degrees of seriousness. I propose to adjourn to two o'clock this afternoon to allow Mr. Bryfogle and Mr. Kleisinger to have time to prepare their submissions. At two o'clock we will proceed with the penalty phase of the hearing.

“Madam Justice V. Gray”