

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v.  
Bryfogle*,  
2015 BCSC 1339

Date: 20150612  
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 Sentence**

Counsel for the Petitioner:

M.J. Kleisinger

The Respondent, R. Charles Bryfogle:

In Person

Place and Date of Hearing:

Kamloops, B.C.  
June 11, 2015

Place and Date of Judgment:

Kamloops, B.C.  
June 12, 2015

[1] **THE COURT:** In oral reasons for judgment pronounced yesterday morning, June 11, 2015, I found Mr. Bryfogle in contempt of two court orders. Mr. Kleisinger, as counsel for the Law Society, and Mr. Bryfogle, on his own behalf, made submissions yesterday afternoon about the appropriate punishment. These are my reasons for judgment on the penalty for Mr. Bryfogle's contempt.

[2] As is the practice with oral reasons for judgment, I may edit them if they are transcribed into written form.

[3] The position of the Law Society is that the appropriate sentence is a custodial sentence of 21 days or, in the alternative of a shorter custodial sentence, that Mr. Bryfogle should be ordered to perform non-law-related community service of 120 hours.

[4] Mr. Bryfogle's position is that a sentence of 21 days or longer is appropriate, but only on the basis that the sentence is suspended and will be served only if Mr. Bryfogle is found to have committed a further contempt of a court order.

[5] I will set out some facts briefly.

[6] Mr. Bryfogle is not a lawyer and has never been a lawyer. He advised that he is 74 years old. He stated in the hearing that he receives an Old Age Pension benefit, but no other pension benefits, and that he lives on a small income. He said that he would "not really" be able to pay a fine. There have been many orders made requiring Mr. Bryfogle to pay costs to the Law Society and he has not paid them.

[7] I will briefly summarize the facts relating to the findings of contempt. They are set out in more detail in the reasons for judgment I delivered yesterday leading to the finding of contempt.

[8] In 2006, Mr. Justice Groberman, then a judge of this court, found that Mr. Bryfogle had engaged in the practice of law on numerous occasions. Because Mr. Bryfogle is not a lawyer, doing so was contrary to the *Legal Profession Act*,

S.B.C. 1998, c. 9. Mr. Justice Groberman pronounced an order which I term the "Original Groberman Order". I will provide a brief summary of each paragraph.

[9] Paragraph 1 prohibits Mr. Bryfogle from practising law in the terms set out in the order.

[10] Paragraph 2 is difficult to summarize. I have given it the cumbersome summary title of the "Suing for Another Without Leave" injunction. That is a complex phrase, but an effort to capture the most important aspects of the term. 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.

[11] Paragraph 3 of the Original Groberman Order restrains Mr. Bryfogle from acting as an attorney or advocate on behalf of any party, pursuant to the *Court Agent Act*, R.S.B.C. 1996, c. 76.

[12] Paragraph 4, which is the other relevant term of the Original Groberman Order, is a paragraph I have given the title the "Give Notice of Involvement for Another" provision. That term requires Mr. Bryfogle to inform someone at the Law Society of a proceeding or legal matter in which Mr. Bryfogle is involved "in any manner whatsoever" with the exception of acting on his own behalf.

[13] The precise party to receive the notice under the Give Notice of Involvement for Another term was changed by the amendment in 2012. The present version, which I term the "Amended Groberman Order", requires Mr. Bryfogle to give notice to a committee.

[14] The other relevant order was made by Mr. Justice Meiklem on April 2, 2007, and is commonly called a "vexatious litigant order". I refer to it as the "Meiklem Order". It provides that Mr. Bryfogle is restrained from commencing lawsuits on his own behalf without leave of the court, and I refer to that as the Suing for Self Without Leave injunction.

[15] During submissions, the parties agreed to add a term to the Amended Groberman Order. I have referred to the term as the Give Notice of Involvement for Self term. It 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.

[16] So it can be seen that with the existing Give Notice of Involvement for Another provision and this newly-agreed Give Notice of Involvement for Self provision, Mr. Bryfogle will be obliged to give notice of his involvement, whether it is on his own behalf or for someone else.

[17] I will say that Mr. Bryfogle appealed both orders, the Original Groberman Order and the Meiklem Order, but Mr. Bryfogle was unsuccessful and both appeals were dismissed.

[18] On January 17, 2012, Madam Justice Bruce found Mr. Bryfogle in contempt of the Give Notice of Involvement for Another provision 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 (with reasons indexed at 2012 BCSC 59). Justice Bruce placed Mr. Bryfogle on a recognizance for one year. She also varied the Original Groberman Order, as I have said, to change the party to which Mr. Bryfogle must give notice, resulting in the Amended Groberman Order.

[19] As detailed in my reasons for judgment yesterday, the Law Society established beyond a reasonable doubt eight of its nine allegations of contempt. It established that Mr. Bryfogle committed five breaches of the Give Notice of Involvement for Another provision, two breaches of the Suing for Self Without Leave injunction, and one breach of the Suing for Another Without Leave injunction. These breaches are of varying degrees of seriousness.

[20] I will note that in one situation, there was one act which gave rise to three breaches. That was the Provincial Court proceeding brought in the name "R. Charles

Bryfogle, Manager, Playtime Childcare Centers". It contravened all three of the terms in question in this petition.

[21] I will summarize these eight breaches by referring to the type of breach.

[22] First, Mr. Bryfogle commenced two proceedings on his own behalf without leave of the court: a Supreme Court proceeding against the Law Society and Mr. Olthuis, and a Provincial Court proceeding in which the claimant is named "R. Charles Bryfogle, Manager, Playtime Childcare Centers", and it is against Ms. Elias.

[23] The Supreme Court matter was stayed by an order of Associate Chief Justice Cullen, which Mr. Bryfogle appealed, but which appeal Mr. Bryfogle abandoned during an application for leave to appeal. The Provincial Court matter is continuing on the apparent basis that the claim is really that of Playtime, a proprietorship of Ms. Hegedus.

[24] Second, Mr. Bryfogle commenced one proceeding on behalf of another without leave of the court. As I have said, that was the Provincial Court proceeding against Ms. Elias.

[25] Third, Mr. Bryfogle failed to advise the Law Society of his involvement in five matters. The three most significant breaches were his failure to advise of his involvement in the Elias claim in the Provincial Court, his involvement in the Messier divorce proceedings, and his involvement in the Employment Standards matter involving Playtime. The least significant was failing to advise of his involvement in two matters, when his recent involvement was primarily serving documents. Those were Federal Court proceedings involving his former wife, Ms. Hegedus, and Provincial Court proceedings involving his current wife, Ms. Janzen-Bryfogle.

[26] The Law Society's position is that Mr. Bryfogle's conduct is flagrant, wilful, defiant, and unremorseful. It argues that Mr. Bryfogle's conduct amounts to a material interference with the administration of justice and prejudices the rights and interests of all parties to the proceedings. The Law Society argues that the public

needs to be protected from Mr. Bryfogle. The Law Society argues that the punishment imposed by Madam Justice Bruce failed to deter Mr. Bryfogle and that the only appropriate punishment for him is to be committed to serve a term of imprisonment.

[27] The court takes into account a number of factors in determining the appropriate penalty upon a finding of contempt. The factors are set out in *Law Society of British Columbia v. Gorman*, 2011 BCSC 1484, at para. 39 [*Gorman*], a decision of Mr. Justice Savage, when he was a member of this court. The factors are also set out in the decision of Madam Justice Bruce in *Law Society of British Columbia v. Bryfogle*, 2012 BCSC 59 at para. 80. Those factors are as follows:

- a) individual and general deterrence;
- b) seriousness of the offence;
- c) protection of the public;
- d) ability to pay a fine;
- e) the degree of intention involved in the contemptuous conduct;
- f) the past record and character of the contemnor; and
- g) whether there are previous findings of contempt.

[28] I am going to go through those factors.

**a) Individual and General Deterrence**

[29] As I have said, the Law Society argues that punishment which fell short of imprisonment failed to deter Mr. Bryfogle and therefore imprisonment is required. Mr. Bryfogle argued that some of his misconduct arose from misunderstanding, and particularly the breadth of the term that he must report when he is involved "in any manner whatsoever". He argued that his agreement to the new term which I have

styled the Give Notice of Involvement for Self provision will mean that he will simply report any involvement in legal matters, whether for himself or others.

[30] Mr. Bryfogle must be deterred from breaching court orders. Even though Madam Justice Bruce found him in contempt for breaching the notice provisions of the Original Groberman Order, he breached that very same provision in five instances before me.

[31] A fit sentence must both deter Mr. Bryfogle from further breaches and deter others from breaching court orders.

**b) Seriousness of the Offence.**

[32] The breach of a court order is always a serious matter. When Mr. Bryfogle commenced proceedings without leave, he caused inconvenience and undoubtedly expense to the court and to the parties who ought not to have been forced to respond, but were required to do so. Mr. Bryfogle's failure to report his involvement to the Law Society defeated the purpose of that term. The Law Society was not given the information it needed to monitor Mr. Bryfogle's conduct in the public interest.

[33] Counsel for the Law Society provided me with a number of cases where the court had ordered imprisonment, often of 30 days, but sometimes fewer days. I will say that Mr. Bryfogle's breaches were not as serious as in some of the cases Mr. Kleisinger cited. For example, in *The Law Society v. Pfahlenburg-Marienburg* (citation not available), the sentence was 30 days in prison. There the wrongful conduct included purporting to give legal advice, apparently counselling the commission of a fraudulent conveyance, taking steps which resulted in the loss of \$120,000, and collecting about \$600 without accounting for it.

[34] While serious, Mr. Bryfogle's conduct is not as serious as in the *von Pfahlenburg* decision, for example.

**c) Protection of the Public**

[35] The orders were made in an effort to protect the public. Mr. Bryfogle has been declared a vexatious litigant and members of the public are to be protected from Mr. Bryfogle starting proceedings without the court granting leave to do so. This should ensure that only claims which could have merit will proceed.

[36] The purpose of the orders is to protect the public. Mr. Bryfogle's breaches cost inconvenience and expense to the people who, as I have said, were wrongly forced to respond to him.

**d) Ability to Pay a Fine**

[37] The evidence suggests that Mr. Bryfogle does not have the ability to pay a fine.

**e) Degree of Intention Involved in Contemptuous Conduct**

[38] All of the conduct in question was deliberate conduct. With respect to starting the lawsuits without leave, the order clearly prohibits starting lawsuits in any court. Mr. Bryfogle was very involved in the Messier divorce matter and the Employment Standards matter. In light of the broad wording of the order and of Madam Justice Bruce's emphasis in her reasons for judgment that "any involvement whatsoever" must be reported, Mr. Bryfogle's conduct is very troubling.

[39] With respect to starting the matter against the Law Society, Mr. Bryfogle suggested that that misconduct had been purged by his abandonment of the appeal. It is troubling that he took the matter as far as he did. After the Law Society prepared a notice of application pointing out that Mr. Bryfogle did not have leave to commence the lawsuit and asking the proceeding to be declared a nullity, Mr. Bryfogle prepared a seven-page application response opposing that. When Associate Chief Justice Cullen declared the proceeding to be a nullity, Mr. Bryfogle appealed that order. This is not the conduct of someone who immediately purges their contempt and accepts their error.



[40] Mr. Bryfogle's effort to explain his persistence was that essentially that he was concerned that he had lost the ability to apply to the court for the leave to bring such a proceeding.

[41] It is clear on the wording of the Meiklem Order that Mr. Bryfogle should not have commenced that lawsuit without leave.

[42] Mr. Bryfogle was willing in the hearing before me to admit quite quickly that some of his actions were clearly in error and contrary to the applicable order, but what is troubling is that out of court, prior to these contempt proceedings, Mr. Bryfogle persisted to contravene court orders.

**f) Past Record and Character of the Contemnor**

[43] There is no suggestion that Mr. Bryfogle has a criminal record. As I have said, he has been declared a vexatious litigant and the evidence is that that such a declaration has been made not only in B.C., but also in other jurisdictions.

**g) Whether there are Previous Findings of Contempt**

[44] This is the second time Mr. Bryfogle has been before the court for sentencing on a finding of contempt. As I have said, Madam Justice Bruce made a previous finding in 2012 of breach of the very same terms. Despite that and the recognizance imposed at that time, Mr. Bryfogle has persisted in breaching the court orders.

[45] Because Mr. Bryfogle is not in a position to pay a fine, there is a limit on the realistic options for the court in sentencing Mr. Bryfogle. The only realistic options here are:

- (1) to impose a sentence of imprisonment to be served forthwith;
- (2) to impose a sentence of imprisonment to be suspended and served only if Mr. Bryfogle is found to have committed a further breach;
- (3) to impose a recognizance with terms such as community service; or

(4) some combination of those orders.

[46] Balancing the factors outlined above, I conclude that an immediate jail term is not necessary to denounce Mr. Bryfogle's misconduct or to ensure future compliance with the order.

[47] The appropriate sentence is a sentence of 21 days of imprisonment to be suspended and served only if Mr. Bryfogle is found to have committed a further breach of a court order within the next three years.

[48] It is also appropriate to impose a recognizance for one year, with terms including community service of 100 hours in that year. The community service should be in a non-law-related field, such as in a hospital.

[49] Mr. Bryfogle suggested that he could be of some assistance in a law-related field. I reject that. I am very concerned that he might be tempted to breach the existing orders in some way if he is involved in a law-related field, so the term is that it will be in a non-law-related field.

[50] I am not imposing a recognizance for three years, I am imposing it only for one year, and in part that is in recognition of the cost to the public of administering the recognizance.

[51] The recognizance will be in the amount of \$5,000 without deposit or surety for a period of one year. I will read out the conditions of the recognizance.

1. Mr. Bryfogle will keep the peace and be of good behaviour.
2. Mr. Bryfogle will report to a probation officer and that will be at a location to be determined shortly, on a date to be determined shortly, and thereafter Mr. Bryfogle is to report as directed by his probation officer, but at least once each week by telephone.

3. Mr. Bryfogle is to provide his probation officer with his current address and telephone number, and to advise him or her of any changes in his address or telephone number forthwith.
4. Mr. Bryfogle is to perform 100 hours of community service in a field which is not related to law, and for an organization approved by his probation officer.
5. Mr. Bryfogle is to provide his probation officer with a copy of the entered order in this proceeding on the earlier of his first day of reporting or within 48 hours of receiving the entered order from counsel for the Law Society.
6. Mr. Bryfogle is also to provide the probation officer with a copy of the order of Mr. Justice Groberman and the order of Mr. Justice Meiklem that I have referred to in these proceedings, and to do that on the first day of reporting.
7. Mr. Bryfogle shall not enter any courthouse in the Province of British Columbia, except if he is charged with an offence and must attend court for matters related to this offence, or if he has the prior written permission of his probation officer to do so.
8. Mr. Bryfogle may not file any document in any court registry in British Columbia without the prior written permission of his probation officer, except if he is charged with an offence and must file a document in connection with the offence.

[52] The order today shall be drafted by Mr. Kleisinger, counsel for the Law Society, and I dispense with the need for Mr. Bryfogle's signature as to form. Counsel for the Law Society is to provide Mr. Bryfogle with an entered copy of the order by faxing it. I understand that Mr. Bryfogle has provided a fax number to the registry, but we can confirm that when I have finished.

[53] As agreed, the order of Mr. Justice Groberman is further amended, and that is to add what I termed the Give Notice of Involvement for Self provision. It 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.

[54] Mr. Bryfogle is bound by this order from today forward, whether or not he has received the entered order from the Law Society. I remind Mr. Bryfogle that this order is in addition to and not in substitution for any other court orders that bind him. In particular, Mr. Bryfogle, you remain bound by the order of Mr. Justice Groberman dated June 9, 2006, as amended, and the order of Mr. Justice Meiklem dated April 2, 2007.

[55] The Law Society has also applied for special costs. It is the usual order in contempt proceedings to make an order for special costs because of the nature of the conduct. That was discussed in the case of *Gorman* at para. 43. In this case, the Law Society is entitled to an order for special costs.

“Madam Justice V. Gray”