

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20160715
Docket: S152905
Registry: Vancouver
Docket: S52024, S52057
Registry: Kamloops

Between:

The Law Society of British Columbia

Petitioner

And

R. Charles Bryfogle

Respondent

Docket: S52024

Between:

R. Charles Bryfogle

Plaintiff

And

**Ministry of Children and Family Development and
Province of British Columbia**

Defendants

And

**Diane McHardy and Cherie Carter, Employees of
the Ministry of Children and Family Development, Williams Lake**

Defendants

Docket: S52027

Between:

R. Charles Bryfogle

Appellant

And

**Director, Ministry of Children and Family Development and
Province of British Columbia, and The Honourable Judge M.H. Church,
Provincial Court of British Columbia**

Appellees

Before: The Honourable Associate Chief Justice Cullen

Oral Reasons for Sentence re Contempt of Court

In Chambers

Counsel for the Plaintiff/ Respondent/Appellant
R.C. Bryfogle:

B.F. Smith
& R. Caron

Counsel for the Petitioner, The Law Society of
British Columbia and the Appellee
The Honourable Judge Church:

M.J. Kleisinger

Counsel for the Defendant/Appellee
Ministry of Children and Family Development:

C.E. LeBeau

Counsel for the Defendant/Appellee The
Province of British Columbia, appearing by
teleconference:

K. Chewka

The Defendants, McHardy and Carter:

No one appeared

Place and Date of Hearing:

Kamloops, B.C.
July 14 and 15, 2016

Place and Date of Judgment:

Kamloops, B.C.
July 15, 2016

[1] **THE COURT:** These Reasons for Sentence should be read in conjunction with my Reasons for Judgment given in *The Law Society v. R. Charles Bryfogle*, December 2, 2015, Docket S152905, Vancouver Registry, and my Reasons for Judgment in *Bryfogle v. the Ministry of Children and Family Development* given on November 27, 2015, reported at 2015 BCSC 2210, for context.

[2] I have found Mr. Bryfogle to be in contempt of various court orders. The findings of contempt were made on four applications in three separate actions. Two of the applications were brought by the Law Society of British Columbia and two were brought by the Ministry of Children and Family Development and the Attorney General for B.C.

[3] The first Law Society application was based on breaches of court orders made by Mr. Justice Groberman on June 9, 2006, as amended by Madam Justice Bruce on January 17, 2012, and another order made by Mr. Justice Meiklem on April 2, 2007. I summarized my findings in relation to those orders at para. 44 of my Reasons for Judgment on December 2nd as follows:

In the result, I am compelled to the conclusion that Mr. Bryfogle has breached the Meiklem J. order by filing the Constitutional Questions Notice and Application and has breached the Groberman/Bruce JJ. order through his involvement in the *Hegedus v. Interior Health Authority* appeal, both as a witness and as an advocate in the manner I have described, and through his involvement in the legal matters represented by the July 3, 9, 10, 23, and August 22, 2015, letters appended to the affidavit of Colette Sauvage as Exhibits JJ, KK, LL, MM, and NN.

[4] The factual basis underlying those findings and the finding of contempt, which I made yesterday, are set forth in paragraphs 1 to 23 of the Law Society's Notice of Application in Volume 1 of its Brief of Documents, and I will simply incorporate that by reference and will include those paragraphs if these Reasons are reduced to writing:

I. The Orders

1. On June 9, 2006, Mr. Justice Groberman (then of the Supreme Court) granted an injunction against Mr. Bryfogle prohibiting him from engaging in the practice of law and requiring him to inform the Law Society of his involvement in proceedings or legal matters, in any

manner whatsoever. The Court of Appeal dismissed Mr. Bryfogle's appeal.

Law Society v. Bryfogle, 2006 BCSC 1092, aff'd 2007 BCCA 511

2. On April 2, 2007, Mr. Justice Meiklem declared Mr. Bryfogle a vexatious litigant and ordered that Mr. Bryfogle "must not, without leave of the court, institute any legal proceedings in any court" (the "Meiklem J. Order"). Mr. Justice Meiklem interpreted "legal proceedings" as "including interlocutory applications which raise a new matter or cause." The Court of Appeal dismissed Mr. Bryfogle's appeal.

Law Society v. Bryfogle, 2015 BCSC 1338
(the "2015 Reasons for Judgment") at para. 24

3. On January 17, 2012, Madam Justice Bruce found Mr. Bryfogle in contempt of Mr. Justice Groberman's order for failing to inform the Law Society of his involvement in four proceedings and of his preparation of a trust document. Madam Justice Bruce varied Mr. Justice Groberman's order to require Mr. Bryfogle to inform the Unauthorized Practice Committee (rather than General Counsel of the Law Society) 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" (the "Varied Groberman J. Order").

Law Society v. Bryfogle, 2012 BCSC 59 (the "2012 Reasons for Judgment")

4. On March 9, 2015, Associate Chief Justice Cullen, on the court's own motion, set aside *Bryfogle v. Law Society of British Columbia and Brent Oithuis (Hunter Litigation) Agent*, Supreme Court Registry No. 050991 as a nullity for having been brought contrary to the Meiklem J. Order (the "Cullen ACJ Order").
5. On June 12, 2015, Madam Justice Gray found Mr. Bryfogle in contempt of the Meiklem J. Order and the Varied Groberman J. Order. Her Ladyship sentenced Mr. Bryfogle to 21 days of incarceration, but suspended the sentence to be "served only if Mr. Bryfogle is found to have committed a further breach of this Order, the Varied Groberman J. Order or the Meiklem J. Order within three years of the pronouncement of this Order."
6. Madam Justice Gray placed Mr. Bryfogle on a recognizance in the amount of \$5,000, without deposit or surety, for one year. Mr. Bryfogle is required to "keep the peace and be of good behaviour" and to perform community service. As a term of the recognizance, Mr. Bryfogle must "not enter any courthouse or file any documents in any court registry in the Province of British Columbia." As an exception to the recognizance, Mr. Bryfogle was permitted to enter a courthouse and file documents with respect to several matters to which he was already involved, including *R. Charles Bryfogle v. Director, Ministry of Children and Family Development, et al*, Supreme Court of British Columbia, Kamloops Registry No. 50587 (the "MCFD Appeal").

7. In delivering the reasons for sentence, Madam Justice Gray reminded Mr. Bryfogle that “this order is in addition to and not in substitution for any other court orders that bind him.”

Law Society v. Bryfogle, 2015 BCSC 1339
(the “2015 Reasons for Sentence”) at para. 54

8. Mr. Bryfogle did not appeal the order of Madam Justice Gray.

II. Mr. Bryfogle’s Application for Constitutional Relief in the MCFD Appeal

9. In September 2014, prior to the contempt hearing before Madam Justice Gray, Mr. Bryfogle brought the MCFD Appeal without having first sought leave.
10. On June 4, 2015, the Ministry of Children and Family Development (the “MCFD”) brought an application to dismiss the MCFD Appeal on the basis that Mr. Bryfogle had instituted the MCFD Appeal contrary to the Meiklem J. Order and for failing to adhere to deadlines imposed by court order. In correspondence after the hearing before Madam Justice Gray, Mr. Bryfogle acknowledged that he had brought the MCFD Appeal contrary to the Meiklem J. Order and that it was a nullity.

Affidavit#4 of C. Sauvage (“Sauvage #4”)

11. On July 6 and 15, 2015, Mr. Bryfogle filed two applications titled “Notice of Constitutional Question” and served them on the Attorneys General of BC and Canada seeking various relief. On July 15, 2015, Mr. Bryfogle filed his response to the MCFD’s application to dismiss the MCFD Appeal.

Sauvage #4 at pp. 97 - 100, 101 - 104, 105 -109

12. On July 23, 2015, counsel for the Attorney General of BC filed an application to set aside Mr. Bryfogle’s Notice of Constitutional Question as a nullity for being brought contrary to the Meiklem J. Order and the Cullen ACJ Order.

Sauvage #4 at pp. 114 -121

13. In the morning of July 27, 2015, the parties appeared before Madam Justice Hyslop to argue the Attorney General’s application. After hearing submissions, Madam Justice Hyslop set aside Mr. Bryfogle’s Notice of Constitutional Question as a nullity and awarded costs to the Attorney General. Madam Justice Hyslop declined to find Mr. Bryfogle in contempt at that time, stating, “I would like [the order of contempt] struck out because that might be for another day and there is also, I think, some unintended confusion in Madam Justice Gray’s order, but not relating to the constitutional question.”

Sauvage #4 at pp. 122- 156, quote at p. 154, order at pp. 157 & 158

14. The application to dismiss the MCFD Appeal was to be heard in the afternoon. Prior to the hearing, the parties consented to an order to set aside the MCFD Appeal as a nullity on a without costs basis.

Souvage #4 at pp. 155 & 156, order at p. 160

15. Mr. Bryfogle did not appeal Madam Justice Hyslop's orders.
- III. **Mr. Bryfogle's Involvement in Zsuzsanna Hegedus' Appeal to the Community Care and Assisted Living Appeal Board**

16. Between 2012 and December 2014, Ms. Hegedus-Holland held licences to operate two child care facilities in Williams Lake. In December 2014, the Interior Health Authority (the "IHA") cancelled Ms. Hegedus' licences. Ms. Hegedus appealed the decision to the Community Care and Assisted Living Board (the "Board").
17. On or about July 29, 2015, Ms. Hegedus provided the Board with her Statement of Points. Within that statement, she listed Mr. Bryfogle as a witness at the hearing.

Affidavit of Penny Washington at pp. 4 & 5

18. On September 1, 2015, Mr. Bryfogle wrote to the Board and counsel for the IHA and made various claims that counsel for the IHA had acted inappropriately, including that she had suppressed and fabricated evidence.

Washington Affidavit at pp. 64 & 65

19. On September 5, 2015, Mr. Bryfogle again wrote to the Board and counsel for the IHA and responded to the issues raised in the Statement of Points of the IHA. Mr. Bryfogle alleged that counsel lied and made misrepresentations to the Board in her submissions.

Washington Affidavit at pp. 68 & 69

20. Mr. Bryfogle has not informed the Law Society of his involvement in this matter.

IV. **Mr. Bryfogle's Correspondence with the Government on Behalf of Others**

21. In July and August 2015, Mr. Bryfogle wrote several letters to various governmental agencies purportedly on behalf of the Chilcotin National Congress regarding several matters, including:
- a. the placement of children in the care of the MCFD (*Souvage #4 at pp. 88, 91*);
 - b. the use of various school buildings in Williams Lake area (*Souvage #4 at p 87*);
 - c. the logging rights of forestry companies operating in the Williams Lake area and the establishment of a new police force and forestry warden system (*Souvage #4 at p. 90*); and
 - d. the purported revocation and replacement of provincial legislation regarding community care licensing (*Souvage #4 at p.89*)

22. Between July and October, 2015, Mr. Bryfogle informed the Law Society that he had been appointed the Minister of Child and Family Services as well as the Attorney General and Solicitor General for the Chilcotin National Congress. Mr. Bryfogle expressed his belief that he was a “public officer” and, as such, the *Legal Profession Act* had no application over his actions in this regard. The Law Society informed Mr. Bryfogle of its belief that he was not a “public officer” as defined in the *Interpretation Act*, that it did not know the specific nature of his involvement with the Chilcotin National Congress and that it was concerned that he was involving himself in the legal matters of others.

Souvage #4 at pp. 8-75

23. Although he generally informed the Law Society of his ‘appointments’ and that he intended to challenge the jurisdiction of MCFD, Mr. Bryfogle did not inform the Law Society of the letters he had written to the government or of his specific involvement in each of those matters.

[5] I did not make an express finding of contempt in relation to those breaches on December 2, 2015, but adjourned the Law Society’s application for such a finding and penalty generally. After sentencing, Mr. Bryfogle did 21 days imprisonment pursuant to an order of Justice Gray made against him on June 12, 2015, following her finding that he was in contempt for eight breaches, including six of the Groberman/Bruce JJ. order, and one commencing a proceeding for another and two breaches of the Meiklem J. order. Justice Gray sentenced Mr. Bryfogle, among other things, to 21 days in jail to be served if he committed a further breach, which I found that he did. When, despite the imposition of the 21-day sentence in December 2015, Mr. Bryfogle continued to breach court orders, the Law Society of British Columbia reset the adjourned contempt application in Action S152905. The Law Society also launched a new application to have Mr. Bryfogle found in contempt for the activities he conducted since December 2, 2015, representing continuing breaches of those orders.

[6] The factual basis for the second contempt application is set out in the Law Society’s Notice of Application at paragraphs 1 to 11 under the heading “Factual Basis” as follows, and here again, I will not read those paragraphs onto the record, but will incorporate them by reference, and if these Reasons are reduced to writing I will include them.

1. Pursuant to the orders of Mr. Justice Groberman (as amended by Madam Justice Bruce) and Madam Justice Gray, Mr. Bryfogle is required to inform the Law Society of his involvement in proceedings or legal matters, in any manner whatsoever. In 2012 and again in 2015, the court found Mr. Bryfogle in contempt for breaching this term of the orders.
2. On December 2, 2015, the Associate Chief Justice found that Mr. Bryfogle again breached this term of the order in several instances with respect to his involvement in the administrative proceedings of his ex-wife and with respect to several letters he sent to various government officials on behalf of the Chilcotin National Congress. At that hearing, Mr. Bryfogle unsuccessfully argued that the orders did not apply to him when he was acting as the 'Attorney General.' His Lordship found at para. 39 of the reasons for judgment:

... He cannot avoid the application of those orders by presenting himself as a public official whose duties entail engagement with legal matters. The orders prevent him from assuming such a role without compliance with the orders which have been made.
3. While adjourning the application to find Mr. Bryfogle in contempt for these activities, the Associate Chief Justice gave effect to Madam Justice Gray's order, ordering Mr. Bryfogle to be incarcerated for 21 days.
4. Since his release from jail, Mr. Bryfogle has written a number of letters to persons in government and private industry on behalf of the Chilcotin National Congress.
5. On March 29, 2016, Mr. Bryfogle wrote letters to several forestry companies threatening a number of consequences if the companies did not pay money to the Chilcotin National Congress. Mr. Bryfogle has not informed the Law Society of the letters he sent to various forestry companies or informed the Law Society of his involvement in those matters.
6. In two letters to the Law Society dated March 29 and April 11, 2016, Mr. Bryfogle informed the Law Society that he had written letters to various government officials over the preceding weeks. In his letter dated March 29, 2016, Mr. Bryfogle described his correspondence in the following manner, for example:

19 March 2016 fx J Philpott, MOH Ottawa Tri-partite Framework Agreement
7. On March 31, 2016, the Law Society warned Mr. Bryfogle of its view that such descriptions were not timely and did not adequately describe his involvement in the legal matters of others. In his response of April 2, 2016, Mr. Bryfogle suggested that he need not inform the Law Society of his actions as the Attorney General and Solicitor General of the Chilcotin National Congress because an order from the 'Universal Supreme Court of the Tsilhqot'in has absolved him of his requirement to do so.

8. Mr. Bryfogle's ex-wife, Zsuzsanna Hegedus (Holland), styles herself as the 'Chief Justice' of the 'Universal Supreme Court of the Tsilhqot'in.' The Supreme Court and the Court of Appeal have declared Ms. Hegedus a vexatious litigant. Mr. Bryfogle's current wife, Shirley Bryfogle, styles herself as the 'Registrar' for the Universal Supreme Court of the Tsilhqot'in. Mr. Bryfogle, Ms. Bryfogle and Ms. Hegedus are not members of the Tsilhqot'in Nation.
9. Through third parties, the Law Society obtained copies of several of the letters that Mr. Bryfogle has written to government officials in March and April 2016. In one such letter (described in Mr. Bryfogle's letter to the Law Society on March 29, 2016 as "Bill Bennett [Mines] Abrogation of Mines Legislation; Intent to Sue") Mr. Bryfogle wrote, in part:

Negotiation or Litigation

The Chilcotin National Congress is prepared to negotiate with BC to address transition for issues arising with those holding BC licenses. **Notice is separately given to several firms involved in mining or mining exploration in the Tsilhqot'in.** Your ministry has until May 15 2016 to inform this office whether you, or your designate, is prepared to work out how existing licenses and permits are to proceed, and what revenue stream is due to the Tsilhqot'in, and whether the five statutes now suspended, are to be abrogated, or modified to confirm to Tsilhqot'in concerns. ...
[sic, emphasis original]

10. In addition to failing to inform the Law Society about his letters to various forestry companies, Mr. Bryfogle has not informed the Law Society of the "notice" he gave to "several firms involved in mining" or of his involvement in those matters.
11. On April 21, 2016, Mr. Bryfogle phoned the corporate office of New Gold Inc.- a company with mining interests in the Chilcotin-Cariboo Region. Mr. Bryfogle stated he was representing the Tsilhqot'in and that some of the company's mines may be in Tsilhqot'in territory. Mr. Bryfogle stated that he was drafting a new "Mining Act" and intended to bring criminal indictments against another aboriginal group if he determined that group was receiving money from the company for a mine found in Tsilhqot'in territory.

[7] The other two applications for contempt are brought by the Ministry and the Attorney General of B.C. in Action S52024 and S52057. They are the same activities in breach of separate orders in each action. The applications for contempt read as follows, and here, as I have read it into the record before I will not do so again, but will incorporate by reference paragraphs 2 to 4 of the Ministry's Notice of Application.

2. For directions as to whether the Orders granted by the Honourable Associate Chief Justice Cullen on November 27, 2015 (the "November 27th Orders") requiring the Applicant, R. Charles, Bryfogle (the "Mr. Bryfogle"), to post security for costs, applies only to the within actions, or applies generally and includes any action in which Mr. Bryfogle is a party;
3. In the alternative, an Order dispensing with the requirement to obtain Mr. Bryfogle's signature approving the form of the November 27th Orders;
4. An Order dispensing with the requirement to obtain Mr. Bryfogle's signature to the Orders pertaining to the within Application;

[8] After a hearing in relation to the Ministry's application for contempt, I concluded that the allegations in paragraphs 2 and 3 were made out as Mr. Bryfogle acknowledged, but dismissed the allegation in paragraph 4 on the basis that there was a reasonable doubt as to whether he had the requisite *mens rea*. Mr. Bryfogle did not contest either of the Law Society's applications to have him found in contempt, and accordingly, I have found him in contempt for breaching the Groberman/Bruce order after December 2nd, 2015, and for breaching the Groberman/Bruce order, the Meiklem order, and my order of March 9, 2015, on the basis as alleged in each of the notices of application for activities before December 2, 2015.

[9] The Law Society has filed several affidavits in support of its submission that Mr. Bryfogle should be sentenced to six to eight months' incarceration. The affidavits demonstrate the harm and concern that Mr. Bryfogle's actions have created in one affidavit of the Vice-President of Tolko Industries, which was the subject of one of Mr. Bryfogle's communications purporting to be the Attorney General and Solicitor General of the Chilcotin National Congress threatening the company with litigation. The Vice-President, Mr. Fleet, deposed as follows in paragraph 11 of his affidavit. Rather than read that in the record, I will incorporate it by reference and it will be included if these Reasons are reduced to writing.

11. Given the directions received by the Tsilhqot'in National Government and the BC Government, Tolko sees no need to respond to Mr. Bryfogle's correspondence. That said, Tolko is concerned that Mr. Bryfogle may escalate matters to interfere with its operations and its

current relationship with the Tsilhqot'in Nation. Tolko is also concerned that the ever-broadening scope of Mr. Bryfogle's correspondence is wasting a great deal of management's time in determining a correct response. In an organization of Tolko's size, not every manager can be instantly aware that the claims and threats contained in the correspondence have no merit. We have had to spend considerable time and resources informing our employees and managers throughout the province on how to deal with Mr. Bryfogle's correspondence.

[10] In another affidavit, Shauntese Constantinoff, an employee of New Gold Incorporated, deposed as to telephone conversations she had with Mr. Bryfogle, whom she understood to be a lawyer for the Chilcotin National Congress or government, and she described his attempts to obtain information from her and to threaten litigation.

[11] There was also an affidavit from Chief Roger William, the Vice-Chair of the Chilcotin National Government, who deposed as to the significant efforts he and the other chiefs comprising the board of directors of the TNG have taken to establish relations with government agencies and industry to improve the lives of the members of the Chilcotin Nation. He recounted his knowledge of Mr. Bryfogle's past dealings with the Chilcotin National Congress and he deposed as follows at paragraphs 31 to 34:

31. As Tsilhqot'in Chiefs, we encourage participation by our members and we highly value and respect our elders and our former leadership. We welcome debate and differences of view within our Nation – this is healthy. I have a lot of respect for Stanley Stump and others that speak the Tsilhqot'in language, came up in a traditional way, and served our people in the past.
32. However, I am deeply concerned by the actions of Mr. Bryfogle. To me, his letters and his actions show a lack of respect for our Nation. It is insulting and disrespectful that he is not a member of our Nation, does not share our experience or history, but claims to speak and act on behalf of the Tsilhqot'in people to government, industry and the public.
33. The conduct of Mr. Bryfogle is increasingly troubling for our Nation. As a result of the judgment of the Supreme Court of Canada, we have a historic opportunity, as Chiefs, to create a better future for our people. We are negotiating with British Columbia to improve the lives of our members. We are working to change outdated attitudes in government, industry, and the public. We are committed to

demonstrating stable, responsible good government as Tsilhqot'in people.

34. I am deeply concerned that Mr. Bryfogle's letters to government and industry (among others) may undermine these efforts. I am concerned that, left to continue in this manner, Mr. Bryfogle will damage the reputation of the Tsilhqot'in Nation, create uncertainty about who speaks for the Tsilhqot'in Nation and cause unnecessary fear and conflict.

[12] The Law Society seeks, in addition to a sentence of incarceration, the following orders, and here I would incorporate by reference all of what is included in paragraph 5(b), 7, 8 and 9, of the Law Society's Notice of Application filed April 22nd, 2016. It is not necessary to read it onto the record, but if reduced to writing those paragraphs will be included:

5. The penalty to be imposed for Mr. Bryfogle's contempt include:
- ...
- (b) Mr. Bryfogle be placed under probation or recognizance for a period of time that the Court deems appropriate, during which time Mr. Bryfogle must:
- i. keep the peace and be of good behavior;
 - ii. regularly report to a probation officer;
 - iii. not enter any courthouse in the Province of British Columbia, except
 - a. if he is charged with an offence and must attend court for matters related to that offence;
 - b. if he is the respondent to a proceeding brought against him and must attend court for matters related to that proceeding; or
 - c. if he is attending court as a witness to a proceeding pursuant to a subpoena;
 - iv. not file any documents in any court registry in the Province British Columbia, except:
 - a. if he is charged with an offence and must file documents for matters related to that offence;
 - b. if he is the respondent to a proceeding brought against him and must file documents in response to that proceeding; or
 - c. if the documents are signed and filed by a member in good standing of the Law Society;
 - v. not involve himself in any proceeding or legal matter, in any manner whatsoever, on behalf or relating to the Tsilhqot'in

Nation and its members, including those who identify with the Chilcotin National Congress; and

- vi. not involve himself in any proceeding or legal matter, in any manner whatsoever, on behalf or relating to Zsuzsanna Hegedus, except as to appear as a witness under subpoena to a criminal proceeding brought against Ms. Hegedus;

...

7. This order is in addition to all other orders of the Court which currently bind Mr. Bryfogle.
8. The Law Society be awarded its fixed costs for this application and the adjourned application to be paid within a time period that this Court deems appropriate.
9. The Court dispense with the requirement for Mr. Bryfogle to approve the form of this order.

[13] Counsel for the Law Society referred to a number of authorities establishing a range for contempt of court orders of between 30 days and 15 months. Counsel for the Ministry adopted the submissions of counsel for the Law Society and sought an order enjoining Mr. Bryfogle from any involvement in any way with litigation involving the Ministry.

[14] Counsel for Mr. Bryfogle, who was retained during the week of May 2, 2016, conceded on behalf of Mr. Bryfogle that the contempt he was guilty of was serious, that he is a serial contemnor and that a sentence of incarceration was appropriate in the circumstances. Counsel for Mr. Bryfogle has filed an Amended Application Response which struck out significant portions of Mr. Bryfogle's original Response filed before he retained Mr. Smith. That Response, that is Mr. Bryfogle's Response and its supporting affidavits, could only be described as contumacious in the extreme and compounding his contempt by wild unsupported accusations and threats of criminal sanction against the counsel for the other parties in this litigation and the court itself.

[15] Counsel for Mr. Bryfogle also filed new affidavits in support of his Amended Response to supplant those affidavits Mr. Bryfogle originally filed on his own. In his new affidavit, Mr. Bryfogle acknowledged his knowledge of and intentional

disobedience of the orders he has been found in contempt of. He deposed as follows in paragraphs 10 to 14:

10. I accept that I should be subject to restrictions on my liberty in consequence of having committed contempt of court as alleged in the Law Society's applications.

11. I accept that a penalty which includes a period of imprisonment is within the range of appropriate sentences for a repeat contemnor who has already served a sentence of imprisonment for contempt of court.

12. I will fully comply with either a conditional sentence order or a probation order with conditions such as those set out in paragraph 5(b) of the Law Society's Notice of Application filed April 23rd, 2016.

13. I do not have the ability to pay \$5,000 forthwith as a penalty for breach of the recognizance.

14. I have monthly income of approximately \$1,800. I have monthly expenses of approximately \$1,600. I have no savings. I own property in Bella Coola valued at approximately \$30,000, but there are judgments in excess of that amount registered against the property.

[16] He also deposed as follows in paragraphs 20 to 23:

20. I acknowledge Justice Meiklem previously made an order under s. 18 of the *Supreme Court Act* declaring me to be a vexatious litigant. I further acknowledge the observations of Associate Chief Justice Cullen in his oral Reasons for Judgment in these proceedings on December 2nd, 2015, that:

Mr. Bryfogle's relentless involvement in legal matters and causes, which either have no merit or no connection to him, seems almost pathological in nature.

21. I will comply with a condition having as its objective the determination of whether I might benefit from psychiatric counselling or treatment in connection with my behaviour as a litigant and to take such counselling or treatment at public expense as may thereby be determined to be beneficial.

22. Sometime in the week of May 2nd, 2016, I verbally informed Grand Chief Stanley Stump Senior, of the Chilcotin National Congress, that effective immediately I would not be engaging in any activity relating to the legal affairs of the Chilcotin National Congress, including in the capacity of Attorney General and Solicitor General for the Chilcotin Nation. Exhibit F to the little affidavit is a true copy of a letter I instructed my counsel Bradford F. Smith to send to Grand Chief Stanley Stump Senior giving him written notice in that regard.

23. I am remorseful for my actions. I fully and unconditionally accept responsibility for my actions.

[17] In another affidavit Jessica Little, a legal assistant to Mr. Smith, appended Notices of Assessment for 2013 and 2014, showing Mr. Bryfogle's marginal income. She also appended two articles titled, "Psychiatric and Legal Aspects of Persistent Litigation" and "Vexatious Litigants and Unusually Persistent Complainants and Litigants". The essence of those articles is that often people who demonstrate similar tendencies as has Mr. Bryfogle in these actions suffer from psychological or psychiatric disorders. Ms. Little also appended a letter from Mr. Smith to the CNC advising of Mr. Bryfogle's decision to end his engagement with that organization.

[18] It is on the basis of those materials that Mr. Smith, on behalf of Mr. Bryfogle, seeks either a shorter term of incarceration than that contended for by the Law Society of B.C., or, in the alternative, a conditional sentence order with appropriate conditions to restrict Mr. Bryfogle's liberty for an appropriate period of time and a *Rogers* type of order requiring him to undergo psychiatric counselling and any necessary treatment to deter or prevent his further involvement in the sort of difficult and destructive behaviour he has behaved in thus far.

[19] As I understand it, Mr. Bryfogle does not oppose the additional orders sought by the Law Society of B.C. in its Notice of Application. He deposes, however, that he has no funds to pay the \$5,000 sought for breach of Justice Gray's recognizance.

[20] In *Law Society of British Columbia v. Gorman*, 2011 BCSC 1484, Mr. Justice Savage, as he then was, set forth the basis for assessing an appropriate penalty for civil contempt in para. 39 as follows:

The factors for the Court to consider when deciding upon a punishment for contempt were canvassed by Allan J. in *Yehia*, at paras. 52-53, and include (1) individual and general deterrence; (2) the seriousness of the offence; (3) the protection of the public; (4) the ability to pay a fine; (5) the degree of intention in the contemptuous conduct; (6) the past record and character of the contemnor; and (7) whether there are previous contempts.

[21] In the present case, the seriousness of the contemnor's conduct is conceded. I do, however, think it necessary to articulate why it is serious. It is serious not simply because Mr. Bryfogle has chosen, on a series of occasions and in a variety of ways, to breach court orders. Although Mr. Bryfogle's motivations may not be

malevolent in the normal sense of being inspired by greed or malice towards a particular individual, it is clear that his actions have caused harm and disruption to the lives of others.

[22] What, in my view, makes Mr. Bryfogle's conduct particularly serious is that his antics have been carried out in the name of the Chilcotin National Congress and/or the Chilcotin Nation. The Chilcotin National Congress undoubtedly is, as Chief William deposes in his affidavit, a legitimate interest group within the larger Chilcotin Nation. The Chilcotin Nation itself is governed by the Chilcotin National Government, which, as Chief William simply but eloquently puts it, is, "working to change outdated attitudes in government, industry and the public," that it is committed to, "stable, responsible, good government," and that it is working to create, "a better future for our people". Those are admirable and achievable aspirations.

[23] Mr. Bryfogle's officious intermeddling with the affairs of the Chilcotin Nation, through his involvement with the Chilcotin National Congress, threatens the credibility of the Chilcotin National Congress and the stability of relations which the Chilcotin Nation at large is striving to create to better the lives of its people. Mr. Bryfogle has used his imaginary position as the Attorney General and Solicitor General of the Chilcotin National Congress to threaten lawsuits and criminal sanctions against various government agencies, industries, and against the counsel for the litigants in this case and even against the court. He is, in effect, using the Chilcotin National Congress as a platform from which to attempt to bully others. His behaviour does not advance the interest of the Chilcotin National Congress or the Chilcotin Nation as a whole. Rather, it imperils those interests.

[24] It is clear that in light of the seriousness of this conduct, not only because of its impact on those who Mr. Bryfogle targets with his threats and actions, but also on those on whose behalf he purports to speak, his persistence over time, the degree of deliberation underlying it and the need to protect the public from this sort of

behaviour, a punishment which promotes individual and general deterrence and promotes the integrity of the court's process is merited.

[25] In this case there are some mitigating or ameliorating features, the presence of which assists in shaping the appropriate penalty. In the first place, Mr. Bryfogle is 75 years old and not in good health. In the second place, he has, as his counsel puts it, crossed a personal Rubicon by acknowledging his wrongdoing and agreeing to be found in contempt. In the third place, he has relinquished his association with the Chilcotin National Congress by so informing its leadership orally and in writing. In the fourth place, and perhaps most importantly, he is willing to subject himself to psychological or psychiatric assessment, and, if necessary, treatment to attempt to curb and control his pernicious behaviour. Without those factors I would consider it necessary to incarcerate Mr. Bryfogle in an institution to fulfil the objectives of a deterrent penalty in the circumstances of this case.

[26] While I accept that Mr. Bryfogle's conversion has been recent and may be tenuous, if he is subject to a significant conditional sentence of imprisonment any recidivism on his part by breaching any of the existing court orders or of any terms of the conditional sentence order will result in a warrant being issued for his arrest and the prospect of him serving some or all of the remainder of his conditional sentence in an institution. Because of the need for deterrence, and because a conditional sentence order is not as onerous a punishment as the imposition of actual incarceration, I will impose a conditional sentence order which is substantially longer than a conventional sentence of imprisonment would be.

[27] The conditional sentence order will be for a period of 12 months. The compulsory conditions will be imposed, as per s. 742.3, as follows.

[28] Mr. Bryfogle, during the currency of the conditional sentence order, will keep the peace and be of good behaviour. He will appear before the court when required to do so by the court. He will report to a supervisor within two working days, or such longer period as the court directs after the making of the conditional sentence order, and thereafter when required by the supervisor and in the manner directed by the

supervisor. He will remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor and he will notify the court or the supervisor in advance of any change of name or address and promptly notify the court or the supervisor of any change of employment or occupation.

[29] In addition to those conditions, for the first three months of the conditional sentence order Mr. Bryfogle will be under house arrest. He will not leave his house except in the case of a legitimate medical emergency or with the prior written permission of his conditional sentence supervisor. He will undergo such psychiatric or psychological assessment as directed by his conditional sentence supervisor and he will participate in any treatment program or counselling recommended as a result of the assessment and approved by the conditional sentence supervisor and by the province. He will have no contact or association with the Chilcotin National Congress or any of its representatives in their capacity as a representative of the Chilcotin National Congress and he will have no contact with any representatives of the Ministry of Children and Family Development. He will adhere to and not breach any of the existing court orders currently in force against him, including the following, the Groberman/Bruce JJ. order dated January 9, 2006, and January 17, 2012; the Meiklem J. order dated April 2, 2007; the Gray J. order dated June 12, 2015; and the Cullen ACJ order dated November 27, 2015.

[30] I have imposed this latter order for clarity even though any court order which Mr. Bryfogle breaches would constitute a breach of his conditional sentence order by virtue of the term that he keep the peace and be of good behaviour, but I want there to be no confusion about the fact that should he breach any of the existing orders which I specified, or any other order, it will result in a warrant being issued for his arrest and the prospect of serving the balance of his conditional sentence order.

[31] I will also incorporate the contents of paragraph 5(b), iii. to vi. inclusive, of the Law Society of B.C. Notice of Application into the conditional sentence order. In particular, he will 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 that offence; (b) if he is the respondent to a proceeding brought against him and must attend court for matters related to that proceeding; or (c) if he is attending court as a witness to a proceeding pursuant to a subpoena.

[32] Four: He will not file any documents in any court registry in the province of British Columbia, except (a) if he is charged with an offence and must file documents for matters related to that offence; (b) if he is the respondent to a proceeding brought against him and must file documents in response to that proceeding; and (c) if the documents are signed and filed by a member in good standing of the Law Society.

[33] Five: He will not involve himself in any proceeding or legal matter in any manner whatsoever on behalf of or relating to the Chilcotin Nation and its members, including those who identify with the Chilcotin National Congress; and six, he will not involve himself in any proceeding or legal matter in any manner whatsoever on behalf of or relating to Zsuzsanna Hegedus, except as to appear as a witness under subpoena to a criminal proceeding brought against Ms. Hegedus.

[34] After Mr. Bryfogle has completed his conditional sentence order he will be subject to a probation order for a further period of one year, with the following terms: (1) he will keep the peace and be of good behaviour; (2) he will report to a probation officer within two days of the termination of his conditional sentence order and thereafter as directed; (3) he will continue to participate in any treatment program or counselling as directed by his probation officer; and thereafter I will incorporate the same provisions as I did in the conditional sentence order arising from paragraph 5(b), iii. to vi., in the Notice of Application of the Law Society of British Columbia.

[35] I will award costs of these applications to the Ministry and to the Law Society of British Columbia, to be paid within two years of today's date. Those costs will be assessed at \$1,000 to the Ministry and \$1,000 to the Law Society of British Columbia.

[36] Insofar as this order is concerned, I am quite content that Mr. Smith can approve it on behalf of Mr. Bryfogle; however, if for any reason he is unable to do so, Mr. Bryfogle's signature is dispensed with.

[37] THE COURT: Are there any questions, Counsel?

[38] MR. SMITH: My Lord, the only extant litigation that I understand he is involved in is in the Court of Appeal --

[39] THE COURT: Yes.

[40] MR. SMITH: -- and Your Lordship's order precludes him from attending any registry or filing any documents. Presumably that would capture the Court of Appeal registry as well, so --

[41] THE COURT: All right, so you want an order excepting from that his attendance at the registry of the Court of Appeal for the specific purpose of filing documents in connection with that appeal.

[42] MR. SMITH: Correct.

[43] THE COURT: All right. Any objection to that?

[44] UNIDENTIFIED COUNSEL: No objection.

[45] THE COURT: All right.

[46] MR. KLEISINGER: No objection.

[47] THE COURT: All right, I will include that order as well.

[48] MR. SMITH: Thank you, My Lord.

[DISCUSSION RE COSTS CONCERNING LAW SOCIETY OF
BRITISH COLUMBIA AND ROGERS ORDER]

[49] THE COURT: I will then incorporate as part of the order that the amount owing by Mr. Bryfogle to the Law Society is \$100,000, and I will also incorporate into the order a provision that permits the conditional sentence supervisor to contact Mr. Bryfogle's medical practitioner to obtain any information that is required to make the referral, and it may be that Mr. Bryfogle will have to sign some document to enable that.

[50] MR. SMITH: Yes, My Lord, I expect he probably will, and that is certainly fine.

[51] THE COURT: All right, thank you.

[DISCUSSION RE COSTS CONCERNING THE DIRECTOR OF MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT AND DISPENSING OF SIGNATURES FOR ORDER]

[52] MS. LE BEAU: And there is just one other housekeeping issue, Your -- My Lord, and that was in relation to the October 30, 2015, interim sealing order.

[53] THE COURT: Yes.

[54] MS. LE BEAU: Your Lordship granted an order dispensing with Mr. Bryfogle's signature on that; however, I would also ask that Michelle Almon's [phonetic] signature be dispensed with as well. She is retired and --

[55] THE COURT: All right.

[56] MS. LE BEAU: -- yes.

[57] THE COURT: I will make that order as well, then.

[58] MS. LE BEAU: Okay. Thank you.

[59] THE COURT: All right, thank you. So I will make an order that Mr. Bryfogle owes \$4,000 in costs to the Ministry to be paid at the rate of \$200 per month

commencing August 1, 2016, and that he will provide 12 months of post-dated cheques to the Ministry in satisfaction of that order until the full amount is paid out.

[FURTHER DISCUSSION RE COSTS]

[60] MR. SMITH: My Lord, maybe Ms. Chewka can advise the Court whether she has any opposition to the Ministry being paid first, followed by the Attorney General, followed by the Law Society.

[61] MS. CHEWKA: We have no opposition to that.

[62] THE COURT: All right. If that is acceptable, then that is what I will order.

[63] MR. SMITH: Thank you, My Lord. I understand Mr. Bryfogle is in receipt of his money on the 3rd of every month.

[64] THE COURT: Oh, I see.

[65] MR. SMITH: So maybe we can just have the cheques payable on the 4th.

[66] THE COURT: All right. All right?

[67] MS. LE BEAU: That is agreeable.

[68] THE COURT: Seems reasonable. All right.

[69] MR. SMITH: Thank you.

[70] THE COURT: In that format, then, Ministry first, the Attorney General second, and then the Law Society third.

[71] MR. SMITH: Thank you, My Lord.

[72] THE COURT: All right. Thank you.

“A.F. Cullen ACJ.”

Associate Chief Justice Cullen