

2018 LSBC 32  
Decision issued: November 16, 2018  
Oral reasons: August 14, 2018  
Citation issued: July 13, 2017

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**In the matter of the *Legal Profession Act*, SBC 1998, c. 9**

**and a hearing concerning**

**GEORGE COUTLEE**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL  
ON A PRELIMINARY APPLICATION  
TO STAY THE CITATION**

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Hearing dates: August 13 and 14, 2018

Panel: Shona Moore, QC, Chair  
Darlene Hammell, Public representative  
Michael Welsh, QC, Bencher

Discipline Counsel: Jaia Rai  
Appearing on his own behalf: George Coutlee

**FACTUAL BACKGROUND TO APPLICATION**

[1] The Respondent, Mr. Coutlee, makes a preliminary application to have the citation in this matter withdrawn or stayed as being baseless and in breach of natural justice and procedural fairness.

[2] The citation reads that:

1. In or about 2005 and 2006, you provided legal services to FE in a family law dispute and engaged in the practice of law, contrary to the order of a disciplinary hearing panel made on January 13, 1997, by which you were suspended pursuant to section 46(1)(d) of the *Legal Profession Act* (then in force) from the practice of law in all fields except for defending persons in the field of criminal law and personal injury claims in the field of civil litigation.
  2. On March 16, 2006, you failed to disclose in an affidavit filed on April 18, 2006 in the Circuit Court of the State of Oregon for the County of Multnomah in which you described the legal services you provided to FE, that pursuant to the order of a disciplinary hearing panel made on January 13, 1997, you were suspended pursuant to section 46(1)(d) of the *Legal Profession Act* (then in force) from the practice of law in all fields except for defending persons in the field of criminal law and personal injury claims in the field of civil litigation.
- [3] This application was made at the commencement of the hearing, before counsel for the Law Society had completed the opening statement in its case.
- [4] The basis for the application is that the person who contacted the Law Society with the initial complaint, FE (now deceased), before her death provided the Law Society with an “exonerating statement” that the legal advice and work Mr. Coutlee had done for FE were within his permitted areas of practice of personal injury law and criminal law.
- [5] Mr. Coutlee also submits that a further statement from RE, the ex-spouse of FE, also established no basis for the allegations that form this citation.
- [6] Mr. Coutlee argues that, based on these statements, staff investigating the matter should have concluded that there was no basis for the allegations.
- [7] The only evidence introduced so far is an Agreed Statement of Facts that attaches a number of documents to which Mr. Coutlee has admitted authenticity and some of which he has admitted for the truth of their contents.
- [8] In addition, Mr. Coutlee sought introduction of the notes by the Law Society investigators of the statements of FE and RE. Counsel for the Law Society admitted the authenticity of the notes while reserving the right to argue relevance and truth. As the statements were made to Law Society investigators, counsel for the Law Society also reserved the right to argue their admissibility as hearsay statements of FE and RE.

- [9] As a result, in considering this application we have read the notes by the Law Society investigators of the two statements made by FE and RE.

## ANALYSIS AND LEGAL REASONING

- [10] We have concluded that this application cannot succeed. The issues of whether Mr. Coutlee practised family law and whether he failed to disclose his practice restrictions in an affidavit to the courts in Oregon involved a mix of questions of fact and law. Without knowing the facts, we are not in a position to determine if the allegations in the citation are made out or not.
- [11] The inability to decide these issues in a factual vacuum was demonstrated by Mr. Coutlee in his argument, where he stated what he said would be the facts regarding his involvement with FE and the court in Oregon. As we pointed out, his own submissions needed a factual foundation and could not be considered in the abstract.
- [12] FE, whatever her beliefs about what happened, was not in a position to categorically state whether Mr. Coutlee breached his practice restrictions or failed to disclose them to the court in Oregon. That is what we must decide once we have the facts and have had submissions on the law. This is not a private dispute between FE and Mr. Coutlee where she could control the outcome. It is a matter between the Law Society and Mr. Coutlee, and FE, if she were alive, would only be a potential witness. It is akin to the position of a complainant in a criminal case.
- [13] In reaching this conclusion we note the comments of the Court of Appeal in *Law Society of British Columbia v. Pyper*, 2017 BCCA 113 at paragraph 35, respecting a similar argument on a preliminary application that the lawyer was not practising law while suspended when he wrote correspondence on behalf of a party in Ontario. Apparently, that party had no complaint about the services provided. The hearing panel dismissed the application and heard evidence, ultimately finding the citation made out.
- [14] The Court found that the panel, after assessing the evidence, reached a reasonable conclusion in finding that the lawyer was practising law. It noted that “[t]he Law Society was entitled to conclude that NH was seeking his assistance as her lawyer and he was responding on that basis, importing into his actions the imprimatur of his status as a lawyer. That conclusion leads inevitably to a finding that Mr. Pyper’s conduct was in violation of the suspension order.”

[15] As in that case, the allegations are that Mr. Coutlee provided services in the area of family law and provided an affidavit describing those services to a court in Oregon without advising of the restrictions on his practice. Whether, on the facts, he did so and thereby acted outside the restrictions on his practice can only be determined by this Panel once it has heard all the evidence.

## **RESULT**

[16] The application is dismissed. This does not prevent Mr. Coutlee from making submissions once the evidence is complete as to whether the citation is made out.