IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *College of Midwives of British Columbia v. Lemay,* 2018 BCSC 1827

Date: 20181023
Docket: A992376
Registry: Vancouver

Between:

College of Midwives of British Columbia

Petitioner

And

Gloria Lemay

Respondent

Before: The Honourable Mr. Justice Branch

Reasons for Judgment

Counsel for the Petitioner:	L.C. Fong W. Pollitt, A/S
Counsel for the Respondent:	J.F.R. Chouinard R.D. Chew
Place and Dates of Hearing:	Vancouver, B.C. September 27-28, 2018
Place and Date of Judgment:	Vancouver, B.C. October 23, 2018

I. INTRODUCTION

[1] The College of Midwives of British Columbia (the "College") regulates the profession of midwifery in British Columbia under the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the "*HPA*") and the associated *Midwives Regulation* (the "*Regulation*"). The College seeks an order amending the language of a previous order issued in this proceeding on February 2, 2000 (the "Order"). The present motion is driven by the fact that the regulation referred to in that order has been amended since the Order issued.

II. BACKGROUND

A. Legislative History

[2] Under the *HPA*, regulations may prescribe services that only a registrant of a specific college may provide. In such cases, "a person other than a registrant of the college must not provide the service" (*HPA* s. 13(2)(a)).

[3] As of 1999, s. 4 of the *Midwives Regulation*, B.C. Reg. 103/95 (the "*Old Regulation*") defined the practice of midwifery as follows:

> 4 (1) Subject to the bylaws, registrants may
>
> (a) assess, monitor, and care for women during normal pregnancy, labour, delivery and the post-partum period,
>
> (b) counsel, support and advise women during pregnancy, labour, delivery and the post-partum period.
>
> (c) manage spontaneous normal vaginal deliveries,
>
> (d) care for, assess and monitor the healthy newborn, and
>
> (e) provide advice and information regarding care for newborns and young infants and deliver contraceptive services during the 3 months following birth.
>
> (2) Subject to the bylaws, aboriginal registrants may practise aboriginal midwifery.

[4] Section 5(1) of the *Old Regulation* reserved specific activities to midwives. At the time the Order was made, the *Old Regulation* set out three types of restricted activities:

> 5(1) Subject to section 14 of the *Health Professions Act,* no person other than a registrant may, for the purposes of midwifery,
>
> (a) conduct internal examinations of women during pregnancy, labour, delivery and the post-partum period,
>
> (b) manage spontaneous normal vaginal deliveries,
>
> (c) perform episiotomies and amniotomies during established labour and repair episiotomies and simple lacerations.

[5] On June 20, 2003, the *Regulation* was amended, adding two further restricted activities: B.C. Reg. 245/2003:

> (d) prescribe, order or administer drugs and substances specified in Schedule 1 to this regulation, and
>
> (e) order, collect samples for, perform or interpret the results and reports of screening and diagnostic tests specified in Schedule 2 to this regulation.

[6] The *Regulation* was replaced by a fresh regulation in 2008: B.C. Regs. 270/2008, 281/2008. However, the definition of midwifery and the list of restricted activities did not change in any material way.

[7] The *Regulation* was amended in 2009: B.C. Reg. 155/2009. These amendments reformulated the reserved activities, although many of the changes were more in the nature of particularization rather than materially widening the scope. B.C. Reg. 155/2009, s. 5 reads as follows:

> 5 (1) A registrant in the course of practicing midwifery May do any of the following:
>
> (a) make a midwifery diagnosis identifying a condition as the cause of signs or symptoms of an individual;
>
> (b) perform a procedure on tissue below the dermis or below the surface of a mucous membrane, for the purposes of
>
> (i) performing episiotomies or amniotomies,
>
> (ii) repairing episiotomies or simple lacerations, or
>
> (iii) taking a swab or specimen required for a screening or diagnostic test;
>
> (c) insert acupuncture needles under the skin for the purpose of pain relief during labour or the post-partum period;
>
> (d) for the purpose of collecting a blood sample, perform venipuncture;
>
> (e) for the purpose of wound care during the post-partum period, administer a solution by irrigation;

(f) administer a substance by

(i) injection,

(ii) inhalation, or

(iii) parenteral instillation

for the purposes of

(iv) pain relief,

(v) preventing or treating dehydration or blood loss,

(vi) resuscitation or other emergency measures, or

(vii) other purposes as required for midwifery practice;

(g) put an instrument or a hand or finger

(i) beyond the point in the nasal passages where they normally narrow, for the purpose of suctioning a newborn,

(ii) beyond the pharynx, for the purpose of intubating a newborn,

(iii) beyond the opening of the urethra, for the purpose of catheterization of a woman during labour or the post-partum period,

(iv) beyond the labia majora, for the purposes of

(A) conducting internal examinations of women,

(B) performing episiotomies or amniotomies,

(C) repairing episiotomies or simple lacerations, or

(D) conducting the vacuum-assisted emergency delivery of a baby,

(v) beyond the anal verge, for the purposes of

(A) assessing perineal repairs,

(B) administering a substance, or

(C) assisting in the emergency delivery of a baby, or

(h) manage labour or normal, spontaneous vaginal delivery of a baby;

(i) apply ultrasound for the purpose of fetal heart monitoring;

(j) give an instruction or authorization for another person to apply, to a named individual, ultrasound for diagnostic or imaging purposes, including any application of ultrasound to a fetus;

(k) in respect of a drug specified in Schedule I or IA of the Drug Schedules Regulation or a barbiturate, narcotic or targeted substance, if the drug, barbiturate, narcotic or targeted substance is prescribed by a medical practitioner,

(i) compound the drug, barbiturate, narcotic or targeted substance,

(ii) dispense the drug, barbiturate, narcotic or targeted substance, or

(iii) administer the drug, barbiturate, narcotic or targeted substance by any method;

(l) in respect of a drug specified in Schedule I of the Drug Schedules Regulation, if included in a category described in Schedule A or B to this regulation,

(i) prescribe the drug,

(ii) compound the drug,

(iii) dispense the drug, or

(iv) administer the drug by any method;

(m) in respect of a drug specified in Schedule II of the Drug Schedules Regulation,

(i) prescribe the drug,

(ii) compound the drug,

(iii) dispense the drug, or

(iv) administer the drug by any method.

(1.1) Only a registrant May provide a service that includes the performance of an activity set out in subsection (1).

[8] As can be seen, the essence of the restricted practices under the *Old Regulation* are still present in s. 5(1)(b)(i) and (ii), (g)(iv), and (h). The 2003 amendments are largely included in s. 5(1)(b)(iii), (d), (i), (k), (l), and (m).

[9] The scope of the practice of midwifery remained substantially the same. Section 4(1) states that registrants may practice midwifery as defined in s. 1 of the *Regulation*:

"midwifery" means the health profession in which a person provides the following services during normal pregnancy, labour, delivery and the post-partum period:

(a) assessment, monitoring and care for women, newborns and infants, including the carrying out of appropriate emergency measures when necessary;

(b) counselling, supporting and advising women, including provision of advice and information regarding care for newborns and infants;

(c) conducting internal examinations of women, performing episiotomies and amniotomies and repairing episiotomies and simple lacerations;

(d) contraceptive services for women during the 3 months following a birth.

[10] Again, the changes to the definition of midwifery are more formal than substantive; they generally reorganize and reword the content of s. 4(1) of the *Old Regulation*. There is only one structural change of note: the *Old Regulation* included the "manage[ment] of spontaneous normal vaginal deliveries" under s. 4(1)(c) ("Scope of Practice") and also under s. 5(1)(b) ("Reserved Acts"). In the current regulation, the "manage[ment] [of] labour or normal, spontaneous vaginal delivery of a baby" is no longer specifically noted in the Scope of Practice, but still appears as a restricted activity under s. 5(1)(h).

[11] The *Regulation* was updated once more in 2016: B.C. Reg. 274/2016. This was a minor amendment that generally relates to the drugs that midwives are permitted to prescribe and administer under s. 5(1)(k) and (l).

B. The Injunction

[12] The *HPA* authorizes "any person" to apply to the Supreme Court for an interim or permanent injunction "to restrain a person from contravening any provision of this Act, the regulations or the bylaws" (*HPA* s. 52(1)).

[13] The respondent has never been a member of the College. The College brought this proceeding against the respondent for allegedly acting as a midwife.

[14] The court granted the Order by consent on February 2, 2000. It states as follows:

> THIS COURT ORDERS that the Respondent Gloria Lemay is hereby permanently prohibited and enjoined from performing the following services for the purpose of midwifery, as defined in Section 4 of the Midwives Regulation, B.C. 103/95, O.C. 269/95:
>
> (a) the conducting of internal vaginal examinations of women during pregnancy, labour, delivery and the postpartum period,
>
> (b) the management of spontaneous normal vaginal deliveries; and
>
> (c) the performance of episiotomies and amniotomies during labour and repair episiotomies and simple lacerations;
>
> except when:

> (a) practising a profession, discipline or other occupation in accordance with the *Health Professions Act,* R.S.B.C. 1996, c. 183, or another Act; or
>
> (b) providing or giving first aid or temporary assistance to another person in case of emergency if that aid or assistance is given without gain or reward or hope of gain or reward.

[15] The exemptions correspond to statutory exceptions under s. 14(a) and (b) of the *HPA*.

[16] The injunction further enjoined the respondent from recovering any fee or remuneration in any court respecting such services.

[17] It also permanently prohibited Ms. Lemay from using the title “Midwife” or any other descriptor that would imply she was registered or associated with the College.

C. The Contempt Proceedings

[18] Based on alleged breaches by the respondent of the Order, the College applied on November 14, 2001 for an order that the respondent be committed or fined, or both, for contempt of court on the basis that she wilfully disobeyed the Order. As summarized by the Court of Appeal in subsequent proceedings, the respondent “assisted in ten home births over a five-month period for a fee of $2,500 on each occasion, all in breach of the injunction” (*College of Midwives of British Columbia v. Lemay*, 2002 BCCA 467 at para. 7).

[19] On January 4, 2002, Justice Blair found the respondent in criminal contempt of the Order: 2002 BCSC 6 at para. 28:

> … I am satisfied that she performed internal vaginal examinations, episiotomies and amniotomies and that these acts breached the Order and did not fall within the exemption provided by s. 14.

[20] The court held that her contempt was criminal rather than civil because breaches of legislation governing midwives carry a “potential impact to the public, particularly mothers and babies”: 2002 BCSC 6 at para. 34. As noted by the Court of Appeal, the respondent’s conduct challenged the court’s authority in a public way,

and was calculated to show that the court order was of no force and effect: 2003 BCCA 583 at para. 39.

[21] Further, after her conviction and prior to sentencing, the respondent again "deliberately and flagrantly flouted the order in a situation that created risk for the mother and the foetus": 2002 BCCA 467 at para. 30.

[22] On July 24, 2002, Justice Blair sentenced the respondent to five months' incarceration and one year's probation. The Court of Appeal dismissed the respondent's appeal of her conviction: 2003 BCCA 583.

III. ANALYSIS

A. Introduction

[23] The College asserts there are five grounds on which the court has jurisdiction to update the Order:

a) Method #1: Exercise the court's inherent jurisdiction to amend the Order to correct a failure to express the manifest intention of the court;

b) Method #2**:** Imply a term into the Order providing the College with "liberty to apply" to amend the Order;

c) Method #3**:** Exercise the court's inherent equitable jurisdiction to adjust a permanent or perpetual injunction;

d) Method #4**:** Exercise a necessarily-implied power under s. 52(1) of the *HPA* to update an injunction granted to restrain someone from contravening the law;

e) Method #5**:** Exercise the court's jurisdiction to grant injunctive relief "after judgment" by invoking R. 10-4(6) of the *Supreme Court Civil Rules.*

[24] I find that the order sought can be justified on the basis of Method #1 alone. It is not necessary or appropriate to address the remaining proposed methods, particularly as they all require:

a) novel (at least for B.C.) interpretations of the common law, statutes or rules, or

b) an aggressive interpretation of the scope of the court's inherent jurisdiction.

[25] The availability of such alternative methods should be addressed more fully in a situation where such interpretations are essential to the outcome.

B. Amending the Order to Reflect the Manifest Intention of the Court

[26] The Court has the power to amend an entered order on the basis that it contains an error in expressing the manifest intention of the court. This jurisdiction was clearly accepted by the Court of Appeal in *Buschau v. Rogers Communications Inc*., 2004 BCCA 142. In the course of oral argument, the respondent eventually conceded that jurisdiction was available under Method #1, but argued that the requisite intention was not illustrated.

[27] In *Buschau*, the defendant had improperly removed monies from a pension plan. At trial, the court ordered the defendant to pay interest to the pension plan trustee on the improperly removed sums, calculated at the rate of return actually earned by the trust. The decision did not prescribe a precise figure. The determination of the amount was referred to a registrar. The defendant instructed an accountant to calculate the amount and the parties accepted this calculation. The registrar advised the trial judge of the agreement so that a term could be added to the order by consent to reflect the amount. After resolution of a dispute about how precisely the global amount should be paid, the specific interest amount became part of a court order approved as to form by the parties.

[28] However, in the course of later work being done on an appeal in relation to other orders, it was discovered that the interest amount was improperly calculated, creating an error in the order. More than three years after the order was entered, proceedings were brought to amend the order.

[29] The trial court held that the proposed amendment did not fall under the "slip rule". This determination was not appealed. However, the Court of Appeal found that the court still had jurisdiction to adjust the order to reflect the "manifest intention" of the trial judge. The Court of Appeal stated:

> [26] If the foregoing is correct, then the Court was not limited, in considering the application before it, to the principles governing rectification of contracts. The Court also had the power to amend the entered order on the basis that it contained an error in expressing the manifest intention of the Court. As stated by Rinfret J. for the Supreme Court of Canada in *Paper Machinery, supra*:
>
> > The question really is therefore whether there is power in the Court to amend a judgment which has been drawn up and entered. In such a case, the rule followed in England is, we think, — and we see no reason why it should not also be the rule followed by this Court — that there is no power to amend a judgment which has been drawn up and entered, except in two cases: (1) Where there has been a slip in drawing it up, or (2) Where there has been error in expressing the manifest intention of the court *(In re Swire [(1885) 30 Ch. D. 239]; Preston Banking Company v. Allsup & Sons [[1895] 1 Ch. 141]; Ainsworth v. Wilding* [[1896] 1 Ch. 673]). [at 188; emphasis added.]
>
> *Paper Machinery* has been cited on numerous occasions by Canadian courts, including this court in *R. v. Blaker* (1983) 46 B.C.L.R. 344, at 347, and in *Racz v. District of Mission* (1988) 22 B.C.L.R. (2d) 70. …
>
> [27] Even if the error in the order was not a "clerical" one or an error arising from an "accidental slip or omission" within the meaning of R. 41(24), then, the court below had the inherent jurisdiction to correct the order insofar as it did not reflect its manifest intention. In the absence of any evidence that the respondents had taken any irrevocable step in reliance on the order, or would suffer undue prejudice were it corrected, I conclude that the Court should have exercised this jurisdiction and corrected its order. In my view, it cannot be in the interests of justice for the respondents to rely on that order to retain a sum to which they have no entitlement in principle.
>
> [Emphasis in original.]

[30] The Court's reluctance to consider proposed Methods #2-5 is supported by the extract from *Paper Machinery*, where the Supreme Court generally limited the jurisdiction of the court to grant amendments after entry of an order to two situations:

(1) the invocation of the slip rule, which was not advanced here, and (2) as necessary to implement the manifest intention of the court: see also *Buchan v. Rome*, 2018 BCCA 175 at para. 27.

C. What Was the Court's Manifest Intention?

[31] The College submits that the only reasonable conclusion is that the court intended to enjoin Ms. Lemay from contravening the *Midwife Regulation*, as amended or replaced from time to time. This submission draws substantial support from the decision of the Court of Appeal in *British Columbia (Workers' Compensation Board) v. Seattle Environmental Consulting Ltd*., 2017 BCCA 19.

[32] In *Seattle Environmental*, the Workers' Compensation Board obtained an interim order in 2012 restraining several persons "from breaching the provisions of the *Workers Compensation Act of British Columbia,* R.S.B.C. 1996, c. 492, and the *Occupational Health & Safety Regulation,* B.C. Reg. 296/97, enacted pursuant thereto" (para. 79). There was no express provision dealing with potential amendments to the regulatory regime that might occur thereafter.

[33] In subsequent proceedings, the Board sought enforcement of the order, and a finding that the respondents were in contempt of court for the alleged breaches of the order. The chambers judge determined that the order was not sufficiently clear so as to be enforceable. The Court of Appeal disagreed and, as part of its decision, addressed the temporal ambit of the order.

[34] The Court of Appeal summarized the findings of the chambers judge on the temporal issue as follows:

> [55] First, there was a temporal flaw, in that the order required the respondents "not to breach the *Act* and not to breach the Regulation", but did not refer to the *Act* or *Regulation* as at a particular date: at paras. 39-40. As a result, and in particular because the *Act* and *Regulation* are frequently amended, the 2012 Order was capable of two possible interpretations: either it required compliance with the *Act* and *Regulation* "as they stood at the date of the Order", or it required compliance with the *Act* and *Regulation* "as amended from time to time": at para. 40.

[35] The Court of Appeal determined that the interim order restraining the defendant from contravening legislation had only one reasonable interpretation with respect to the temporal scope, namely that the order "requires compliance with the *Act* and *Regulation* as amended from time to time" [emphasis added] (para. 82).

[36] The Court of Appeal discerned that the trial judge's manifest intention was to refer to the law as amended based on two grounds:

> [82] … First, the only reasonable interpretation of the Order is that it requires compliance with the *Act* and *Regulation* as amended from time to time. It would make no sense to require compliance with statutory or regulatory requirements that had been replaced or superseded**,** but that is what a point-in-time interpretation would require.
>
> [83] Second, the statutory obligation on employers, workers, supervisors and the directors and officers of corporations (earlier described) surely must be to comply with the *Act* and *Regulations as they exist from time to time.* This makes sense because the *Act* and *Regulations* governing health and safety are contextual, reflecting changes in knowledge and technology, and reflecting the ongoing obligations of persons who elect to operate for profit in this industry to keep informed and abreast of workplace requirements. Orders under s. 198 surely parallel those obligations as a means of ensuring compliance.
>
> [Emphasis added.]

[37] Accordingly, the Court of Appeal held that, "were it necessary to do so, I would read into the Order the requirement to comply with the *Act* and *Regulations as amended"* [emphasis in original] (para. 84).

[38] Further, in addressing a concern raised about the alleged contemnor's need to cross-reference the order with the current regulations in order to remain in compliance with the order, the Court of Appeal stated:

> [99] In my view, it was precisely situations like the one at bar, where the alleged contemnors have a long history of breaches of the regulatory regime, that the legislature provided this avenue for court-ordered injunctive relief to ensure regulatory compliance. The judge's finding suggests that even though the legislature requires statutory compliance and allows a court to order certain persons to comply with the statute in defined circumstances, the court nonetheless cannot enforce such orders through its contempt powers. With respect, I cannot agree.

[39] I agree with the College that similar reasoning applies in this case to reveal the "manifest intention" of the court in issuing the Order.

[40] I do not find, as argued by the respondent, that a different approach should apply simply because the order in *Seattle Environmental* was an interim order. An interim order remains an operative order until set aside or replaced by a permanent order: *Seattle Environmental* at para. 111.

[41] I find that the court's intention here was to prevent the respondent from practicing midwifery. That was the public policy concern raised by the petition. The court's intention is illustrated in the initial statement that the respondent "is hereby permanently prohibited and enjoined from performing the following services for the purpose of midwifery". The additional language that laid out certain specifics contained in the then-governing legislation was arguably redundant, but has now unfortunately created a cleavage between the intention and the language of the Order.

[42] Conversely, the Order does not disclose an intention to fix the respondent's practice restrictions to those applicable at a particular point in time. To derive such an intention suggests that the chambers judge intended to allow for the possibility of the respondent practicing midwifery without College registration in the future dependant on possible future amendments. I find no basis for deriving such an intention.

[43] The final term of the Order provides further support for this conclusion. It states:

> THIS COURT FURTHER ORDERS that the Respondent Gloria Lemay is hereby permanently prohibited and enjoined from using the title 'Midwife' or any name, title, description or abbreviation in any manner that expresses or implies that she is a registrant or is associated with the College of Midwives of British Columbia.

[44] This additional term makes it clear that the court's intention was not simply to prevent Ms. Lemay from engaging in the three restricted activities contained in the *Regulation* as it then stood. Rather, the term discloses the court's intention to impose a permanent and wide-ranging restriction on Ms. Lemay's ability to engage in midwifery generally.

[45] Non-registrants are obligated to follow the law, and specifically, the regulations under the *HPA* as they exist from time to time. Restraining orders issued under s. 52 of the *HPA* ought to "parallel those [statutory] obligations" because they are directed at ensuring compliance with them: see *Seattle Environmental* at para. 83.

[46] The parties agree that the question of manifest intention is to be considered from the perspective of the court. However, to the extent that the parties' intentions could be considered because it was a consent order (see *Buschau* at paras. 22-25), the respondent was consenting to an order that banned her from practicing midwifery, without any guarantee or promise that the *Regulation* would ever change in the future, either to widen or narrow the restricted activities. She did not reserve her right to practice midwifery should such an event occur. As such, her own intention must have been (or as we see from the subsequent contempt decisions, should have been) that she was not to practice midwifery again, absent an order setting aside the injunction.

[47] Looking at the question of intention from the perspective of the College, there is no evidence that the College was seeking a right to pursue the respondent for conducting the specific acts set out in the Order should the scope of practice of midwifery be narrowed in the future to remove such acts from the College's regulatory control. The College would certainly have no legislative authority to do so, and it would be a strange thing if the College could rely on a court order to regulate activities that the legislature instructed it to no longer regulate.

[48] Hence, I conclude that the "manifest intention" of the court, and the parties, was to restrain Ms. Lemay from engaging in the reserved acts of midwifery as defined from time to time in the *Regulation*, and not as they stood at any particular point in time.

[49] The approach to amended legislation outlined in the *B.C. Interpretation Act* also broadly supports the logic of this conclusion. Section 32 of the *Interpretation Act* states:

> In an enactment a reference to another enactment of the Province or of Canada is a reference to the other enactment as amended, whether amended before or after the commencement of the enactment in which the reference occurs.
>
> [Emphasis added.]

[50] In *Windsor (City) v. Richardson*, [1994] O.J. No. 166 (Gen. Div.), the City of Windsor claimed that reimbursement for certain welfare payments made to the defendant were due under an agreement. After signing an agreement, the defendant had received monies from the settlement of a lawsuit. The agreement referred to a regulation which was later amended to specifically address the recovery of monies pursuant to litigation. The court held that the agreement was properly read as referring to the law as amended even though those words were not expressly used in the agreement:

> THE STATUTE RELIED ON:
>
> [14] The respondent argued that because the reference was to R.S.O. 1980, c.188, without any further proviso, such as "as amended", the applicant is limited to the wording of the statute, and of the regulation under it, as it stood in 1980. The applicant's position was that this was a mere heading, and the reference would have be [sic] to the statute and regulation as they stood when the agreement was signed.
>
> [15] In my view, the statutory reference is more than a mere heading. The City could obtain the agreement only because of specific statutory authority, and the extent of its power to collect is dependent on the wording of "the relevant regulation" referred to. The applicant points out that the reference had not been changed despite the important change in the regulation.
>
> [16] I find that the Canada Interpretation Act, R.C. ch. I-21 by s. 40 provides that a reference to a federal enactment is deemed to be a reference to that enactment as amended.
>
> [17] Several Provincial Interpretation Acts have similar provisions. …
>
> …
>
> [19] While the lack of the words "as amended" do give difficulty, (see for example Bennion, *Statutory Interpretation* (2d), pgs. 198-199), in my view a fair and common sense approach leads to the conclusion that the reference to the Act as R.S.O. 1980, c. 188, would include all subsequent amendments at least until the next consolidation and that the reference to the regulations made under the Act should be similarly construed. I therefore find that the agreement referred to s. 4 of the regulations, as amended, which would authorize a claim for reimbursement out of money that "would be included in income for the purposes of s. 13".

[51] Accordingly, the approach of the Court of Appeal in *Seattle Environmental*, the court in *Windsor*, and the approach espoused in the *Interpretation Act*, all support the conclusion that the court's "manifest intention" must have been to refer to reserved acts as they stood from time to time in the *Regulation,* and that detailing the restrictions found in the then-operative *Old Regulation* was simply a matter of convenience.

[52] Once this manifest intention is found in relation to the Order, it negates the respondent's concerns that any amendment is redundant or overbroad, or that it should be necessary for the College to seek a new permanent injunction through a fresh proceeding. Rather, the Court simply makes the amendment to confirm the intention of the original court.

[53] I also find that this is an appropriate order to make when the issue is considered more broadly as an exercise of the court's inherent jurisdiction:

a) The Order is the document to which members of the public must refer (and which the College may provide to them) to outline the extent of the court's prohibition as it relates to Ms. Lemay. Distribution of an order with the more limited listing of reserved acts as the *Regulation* stood in 2000 is misleading. Members of the public may fall under a misapprehension that Ms. Lemay is entitled to perform acts that are beyond the list as it stood in 2000, but which are now prohibited by amendments to the regulatory framework;

b) There is no material prejudice to Ms. Lemay. Her counsel agreed that she is obligated to comply with the law as it stands in any event. The fact that the proposed amended Order may make it somewhat simpler for the College to pursue remedial measures in the case of a breach is not a factor upon which the Court places particular weight given that:

    i. the respondent should not be breaching the Regulation in any event; and

ii. the respondent's prior contempt of this court raises a legitimate concern, such that the court's ongoing involvement to ensure compliance supports rather than weighs against the granting of the amending order. As the court stated in *Seattle Environmental*:

> [106] I would also note that this is somewhat of an extraordinary case. The matter before the court involves a lengthy and continuing history of multiple types of workplace conduct said to be of a very serious nature. It involves for-profit actors with statutory duties in a highly regulated workplace. There have been multiple Board orders, compliance reports and administrative penalties. In such circumstances, an order requiring compliance with the statute and regulations may be viewed somewhat differently than matters involving isolated incidents or infrequent conduct.

[54] As such, the Court agrees to amend the first term of the Order in the form proposed by the College at the hearing, specifically:

> THIS COURT ORDERS that the Respondent Gloria Lemay is hereby permanently prohibited and enjoined from performing acts reserved to registrants ~~the following services~~ for the purpose of midwifery, pursuant to ~~as defined~~ ~~in Section 4 of~~ the Midwives Regulation, B.C. 103/95, O.C. 269/95, as amended or replaced from time to time, by enactments including the Midwives Regulation B.C. Reg. 281/2008, as amended or replaced from time to time,~~:~~
>
> (a) ~~the conducting of internal vaginal examinations of women during pregnancy, labour, delivery and the postpartum period,~~
>
> (b) ~~the management of spontaneous normal vaginal deliveries; and~~
>
> (c) ~~the performance of episiotomies and amniotomies during labour and repair episiotomies and simple lacerations,~~
>
> except when:
>
> (a) practising a profession, discipline or other occupation in accordance with the *Health Professions Act,* R.S.B.C. 1996, c. 183, or another Act; or
>
> (b) providing or giving first aid or temporary assistance to another person in case of emergency if that aid or assistance is given without gain or reward or hope of gain or reward.

IV. OBJECTIONS TO AFFIDAVIT

[55] I note that the respondent raised objections to certain paragraphs in the affidavit of the College's affiant. It was not necessary to rely on those paragraphs to resolve the application under Method #1. Therefore, I need not address those objections.

V. COSTS

[56] I find that it is not appropriate to award costs to the College because:

a) irrespective of the respondent's opposition, the College was going to have to seek a court order to obtain the amendment, given the necessity for the Court to determine its "manifest intention" in the exercise of its inherent jurisdiction; and

b) the respondent did confirm that she intended to comply with the current regulations in any event.

[57] Both parties should bear their own costs, unless there were discussions between the parties of which I am unaware. If that is the case, the party seeking a different order should provide written submissions within 30 days of this decision, with the other party having 15 days thereafter to respond in writing.

"Branch J."

_____

The Honourable Mr. Justice Branch