



## **WINTERS V. LEGAL SERVICES SOCIETY**

Reasons for Judgment of the  
Court of Appeal of British Columbia  
May 8th, 1997

Date: 19970508  
Docket: CA020404  
Registry: Vancouver

### **COURT OF APPEAL FOR BRITISH COLUMBIA**

#### ORAL REASONS FOR JUDGMENT:

Before:

The Honourable Chief Justice McEachern  
The Honourable Mr. Justice Esson  
The Honourable Madam Justice Newbury

BETWEEN:

ARTHUR ROBERT WINTERS

PETITIONER (APPELLANT)

AND:

LEGAL SERVICES SOCIETY

RESPONDENT (RESPONDENT)

J. Conroy, Q.C. appearing for the Appellant  
D. MacAdams appearing for the Respondent

[1] ESSON, J.A.: This is an appeal against a decision dismissing a petition which seeks a declaration that the Legal Services Society is required to provide Mr. Winters

with legal representation in the defence of a disciplinary offence before the disciplinary court of a federal penal institution in British Columbia. Mr. Winters is presently serving a sentence of life imprisonment without eligibility for parole for 25 years following upon his conviction for murder in Alberta in 1983. Some ten years later, he was transferred to an institution in British Columbia.

[2] The appeal can only succeed if this Court can distinguish its decision in *Landry v. Legal Services Society of British Columbia* (1986) 28 C.C.C. (3d) 138, 4 W.W.R. 645, 3 B.C.L.R. (2d) 98. Mr. Conroy has sought to persuade us that there is a distinction to be made in that Mr. Justice Nacfarlane, when giving the judgment of the Court and in discussing the question whether the proceedings could be classified as criminal, observed at page 104 (B.C.L.R.) that the charges were brought under a Commissioner's directive and that such directives do not have the force of law. There has been a subsequent amendment to the *Act* and *Regulations* and, as a result, the matters which were covered by the Commissioner's directive are now covered by statute.

[3] That factor, however, does not appear to me to have been in any way an integral part of the Court's decision, and I therefore cannot regard it as a ground of distinction.

[4] The question is one of statutory interpretation entirely. The statute was enacted in 1979 and has not been amended in any relevant particulars since. *Landry* is a fully considered decision. Notwithstanding a later decision on an entirely different set of facts, which may be said to have employed different reasoning, I can see no basis upon which this division could properly regard itself otherwise than as bound by the decision in *Landry*.

[5] I therefore would dismiss the appeal.

[6] McEACHERN, J.A.. I agree. Perhaps I should add, just for completeness, that Mr. Conroy did raise with us the possibility of having this appeal heard by a Court of five judges.

[7] I would not be in favour of making an order in that behalf now, so as to reconsider *Landry*, because for the reasons given by Mr. Justice Esson, I think the law is settled and that it would serve no purpose in my view to order that the matter be argued again. The law has stood as it is since *Landry*, and I do not think we should lightly reconsider these matters or order five judges to hear an appeal merely because it cannot succeed without reconsidering what appears to be satisfactorily settled law.

[8] For those additional reasons, I would agree with Mr. Justice Esson that the appeal should be dismissed.

[9] NEWBURY, J.A.: I agree as well with both my colleagues.

[10] McEACHERN, J.A.: The appeal is dismissed.

The Honourable Chief Justice McEachern

The Honourable Mr. Justice Esson

The Honourable Madam Justice Newbury