

The following version is for informational purposes only

BROADWAY PROPERTIES LTD.
BOTHAM HOLDINGS LTD.
ROBCO PROPERTIES LTD.
2000 HOLDINGS LTD.
RONALD S. ROADBURG AND
REFRIGERATIVE SUPPLY LIMITED

v.

ASSESSOR OF AREA 09 - VANCOUVER

SUPREME COURT OF BRITISH COLUMBIA (L042658) Vancouver Registry

Before the HONOURABLE MR. JUSTICE MACZKO (in chambers)
Date and Place of Hearing: February 2, 2005, Vancouver, BC

J. Parkes as agent for the Appellants
G.P. Holeksa for the Respondent

Reasons for Judgment (Oral)

February 2, 2005

[1] THE COURT: This is an application by the Respondent to deny Mr. Parkes the right of audience before this court because he is acting as counsel for the Appellants and he is not a member of the Law Society.

[2] Mr. Parkes is a real estate evaluator. He earns his fees by acting for people and corporations on a contingency fee basis. He appeals property assessments and receives a fee which is 50 percent of the amount by which the property taxes are reduced. Mr. Parkes acts through his own corporation and the corporation makes contracts with the clients. Mr. Parkes then takes his fee, or income, or draws from the corporation.

[3] In this case, there are several corporate entities or businesses that own commercial properties in Vancouver. Mr. Parkes, through his corporation, agreed to appeal their tax assessments for 50 percent of the amount by which the taxes are reduced. He acted for the property owners before the Assessment Appeal Board and now seeks to appeal that decision by way of Stated Case to the Supreme Court of British Columbia.

[4] His argument is that he acts as an agent for the Appellants in this appeal and asks the court to exercise its discretion and allow him to appear as counsel because he has a financial stake in the outcome, that is, the contingency fee, if he is successful.

[5] I can see no basis on which I could grant the right of audience. The *Legal Profession Act* makes it quite clear that it is unlawful for anyone to perform legal services unless that person is a member of the Law Society. There is no dispute that acting as counsel before the courts is the performance of a legal service.

[6] As recently as May of 2004, our Court of Appeal, in *Fast Trac Bobcat & Excavating Service, a Division of Fast Trac Enterprises Ltd. v. Riverfront Corporate Centre Ltd.*, [2004] B.C.J. No. 989 (C.A.), dealt specifically with the issue as follows:

With respect to the right to represent corporations in litigation, the following propositions emerge from the authorities:

1. No one other than a member in good standing of the Law Society has a right of audience on behalf of a corporate litigant.
2. As a matter of indulgence, the court may permit others to represent a corporation.
3. Generally, that indulgence will be granted only to a person who is an officer of the corporation.

[7] In *British Columbia Telephone Co. v. Rueben* (1982), 138 D.L.R. (3d) 549 (B.C.S.C.), the court demonstrated how narrowly that discretion should be exercised. The headnote from that case reads as follows:

There is a discretionary power to grant [the] privilege of audience to persons other than lawyers, but that discretion should be exercised rarely and with caution. While a corporation may be represented by an officer, a paralegal employed by the corporation has no right of audience to represent the corporation before a small claims court, and a judge does not err in refusing to exercise his discretion in favour of allowing the employee to so appear.

[8] It is clear on the facts before me that Mr. Parkes does not fall within the exceptions articulated by the courts or the *Legal Profession Act*. His argument is that in acting on a contingency fee basis, he has a stake in the outcome of the case and falls within the exception in s. 15 (1) (a) of the *Legal Profession Act*, which provides as follows:

No person, other than a practising lawyer, is permitted to engage in the practice of law, except

- (a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf ...

[9] I do not think Mr. Parkes falls within this exception merely because he has a stake in the outcome. He is not a party to the proceeding and he is not acting solely on his own behalf. There is no exception in the *Legal Profession Act* which would allow Mr. Parkes to act and no court has created such an exception.

[10] Doing legal work on a contingency fee basis is quite common among lawyers. Mr. Parkes proposes to perform the same service that lawyers provide on exactly the same terms.

[11] I grant the Respondent's application and deny Mr. Parkes the right to act as counsel in this action.

[12] MR. HOLEKSA: And the Respondent will be entitled to its costs in any event of the cause?

[13] THE COURT: Costs normally follow the event.

[Paragraphs [14] to [45] are an exchange between counsel and court with respect to costs and have not been reproduced here]