

**ANTHONY J. JASICH, LL.B.**

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Thursday, July 15, 2010

**The Honourable Chief Justice of British Columbia  
Mr. Justice Lance Finch**

BC Court of Appeal  
800 Smithe Street  
Vancouver, BC V6Z 2E1

**MAY IT PLEASE YOUR LORDSHIP**

Re: Even wonder why judges judge?  
Article by T.M. McEwan, J to the Vancouver Sun, April 10, 2010

This letter is prompted by the above-noted article by Mr. Justice McEwan, in particular regarding his comment, viz. “judges hold an office that obliges them to apply the law correctly, and that that preoccupation significantly overrides questions of sympathy or favour”.

But what if the judge does not apply the law correctly? This would happen in instances where the judge may, *inter alia*, be ignorant of the law, or counsel appearing before the judge knows the law however does not bring the law to the attention of the judge, or the judge is influenced by external pressures.

I am particularly interested in the case of *Gaffney vs. Gaffney*, which came before your Lordship on 2007-11-29, Docket # CA035077; CA035415; CA035577, accompanied by your oral reasons for judgment delivered on the 29<sup>th</sup> day of November, 2007.

On Page 5 of your Reasons for Judgment, Your Lordship refers to the bankruptcy proceedings of the wife of Harold Gaffney, Sheila Frances Gaffney. On August 31, 2006, Mr. Gaffney's application to set aside his wife's discharge came before Mr. Justice Ian Meiklem. I was invited by Ms. Zanetti, appearing as agent, on behalf of Mr. Harold Gaffney, to sit at counsel table which with Mr. Justice Meiklem's permission, I did. On glancing through the documents in support of the assignment in bankruptcy of the wife, Sheila Gaffney, to one untrained in bankruptcy law, I saw that there might not have been a proper assignment in bankruptcy. It was during the noon break that I suggested to Mr. Gaffney and to Ms. Zanetti that the application should be one to annul the assignment in bankruptcy. I appear to have been vindicated when in his discourse Mr. Justice Meiklem stated that, “The trustee was well aware that there was no real insolvency. There was no insolvency.”<sup>1</sup>(1) See attached copy of transcript.

Mr. Justice Meiklem found that Mr. Gaffney had no standing and therefore could not oppose the discharge of Mrs. Gaffney or question the bankruptcy proceedings. How something which was void *ab initio*, could be given life is beyond me. But then I like to believe that I follow the law.

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<sup>1</sup> Meiklem's findings of August 31, 2006

Mrs. Sheila Frances Gaffney voluntarily left the matrimonial home on April 29, 2005 and filed an assignment in bankruptcy on May 13, 2005 with Mr. Ken Rowan as the official trustee and which I considered void *ab initio*.

Later, in the month of December 2006, Mr. Keith Oliver, on behalf of the wife, initiated a petition pursuant to the *Partition of Property Act*, which was filed in the New Westminster Registry under No.S102880. The matter came before Mr. Justice Robert Crawford on April 25th, 2007 when Crawford, J. made an order that the property be sold, with the wife Sheila Frances Gaffney to have exclusive conduct of the sale and any offer obtained pursuant to the Petitioner's conduct of the sale of the subject property is to be approved by the court.

There were two (2) offers on the property. One by Mariana Oviedo Ovando for the sum of \$225,000.00 and the other by Mr. Raymond Lehoux for \$240,000.00. Mr. Oliver objected to Mr. Lehoux's offer on the grounds that that Mr. Lehoux was an ex-convict who had served his time. The Real Estate agent Noella Neale of Re/Max All Points Realty Ltd. refused to put Mr. Lehoux's offer before the court.

Crawford J. made the order granting the sale of the property without due consideration to Mr. Gaffney's circumstances. Mr. Gaffney's half of the sale proceeds would not be sufficient to provide him with similar accommodation. I refer Your Lordship to the case of *Harmeling vs. Harmeling* [1978] 5WWR 688<sup>2</sup> and I quote from the head note at page 688:

"The husband and wife separated in 1974 and the wife was granted an order for partition on sale of the matrimonial home. The husband appealed.

Held: (Craig and McIntyre, JJA. Dissenting) The appeal was allowed. There was a *prima facie* right of joint tenant to partition or sale; however, s. 3 gave the court the discretion not to order partition where justice required that such an order should not be made. Here the house had been bought with the husband's money to provide for his retirement. He was over 70 years of age and his half of the sale proceeds together with his other assets would not be sufficient to provide him with similar accommodation."

On a further application by the wife for occupational rent in the *Harmeling* case, Mr. Justice Legg held that the wife was not entitled to occupation rent as she had not established that she had been ousted from the home. See *Harmeling vs. Harmeling* [1980] 6WWR 771.<sup>3</sup>

Also see *Phillips vs. Phillips* (Victoria No. 31/79)<sup>4</sup> a judgment of the Court of Appeal of B.C. before Taggart, Hinkson and Lambert, JJA.

I note that Mr. Harold Cecil Gaffney, the husband of Mrs. Sheila Frances Gaffney appeared before Your Lordship, Mr. Justice John Hall and the Honourable Madam Justice Levine in Chambers on November 29, 2007, transcript enclosed<sup>5</sup>, where Mr. Gaffney represented himself.

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5 Transcript of the Hearing of Nov. 29, 2007

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In spite of the law, which Your Lordship had obviously not briefed, you had the temerity to accuse Mr. Gaffney of making many unfounded and vexatious allegations, while you were in the process of removing the roof from over Mr. Gaffney's head without, in my opinion, having any legal authority to do so and in spite of, in my opinion, having Mrs. Gaffney abuse the provisions of the *Bankruptcy and Insolvency Act*.

Remember Mr. Gaffney was representing himself and he was not knowledgeable about the niceties of the legal profession. Mr. Gaffney is a senior citizen, who was 75 years of age at the time he appeared before you. It must have made Your Lordship feel good to show your omnipotence in your Reasons for Judgment. Unfortunately however omnipotence cannot be equated to omniscience of which you seem to have shown a lack.

I also note that Madam Justice Mary Newbury, who was the first judge at the court of appeal to make a decision on Mr. Gaffney's appeal regarding his legal standing in the bankruptcy court, was a member of the Law Reform Commission of British Columbia and refer to Working Paper No. 58 Co-ownership of Land <sup>6</sup> which *Harmeling vs. Harmeling* (supra) was referred to. Newbury J.A. who knew better, dismissed Mr. Gaffney's application based on a mere technicality, that Mr. Gaffney had gone beyond the 10 days allowed for appeals in bankruptcy matters but well within the 30 days allowed for a Supreme Court civil matter and refused to extend the time.

I would like to quote from the Journal of Thomas Merton, with whom you may or may not be familiar, written on June 28, 1940.

"What (besides making lists of the vices of our age) are some of the greatest vices of our age?

To begin with, people began to get self-conscious about the fact that their misconducted lives were going to pieces", so, instead of ceasing to do the things that made them ashamed and unhappy, they made it a new rule that they must never be ashamed of the things they did. There was to be only one capital sin: to be ashamed. That was how they thought they could solve the problem of sin, by abolishing the term."

So you should not worry about what you did to to Mr. Gaffney because there is no shame in what you did in spite of the law of which you are the gatekeepers.

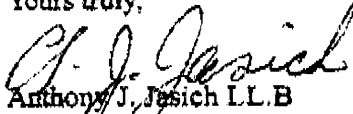
In closing, Mr. Oliver, counsel for Mrs. Sheila Frances Gaffney, attempted to have an application to settle the order set down before the registrar Jennifer Jordan. In view of Mr. Gaffney, having a section 29 ordered against him, Ms. Jordan wouldn't hear the application, therefore Mr. Oliver's application was put into the appeal chambers courtroom instead which was December 17, 2007 at which Tysoe, J.A. was presiding. I submit that Mr. Justice Tysoe was the only judge of the 23 or so judges on the Gaffney matter who acted independently and applied the law correctly. Tysoe, J.A., refused to grant Mr. Oliver the order he was seeking and Mr. Oliver left chambers with his tail between his legs, having come before a judge who applied the law, to the chagrin of Mr. Oliver. Mr. Oliver had brought an application to have the court of appeal order costs be paid to Mrs. Gaffney but in effect Mr. Oliver was speaking for costs for legal fees for himself, since he disclosed to Mr. Gaffney in an email later that Mrs. Gaffney would get nothing. Tysoe, J.A. however refused to give Mr. Oliver the order he was

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Mr. Justice Tysoe speaking very low seemed to be advising Mr. Oliver of the case of *Harmeling vs. Harmeling* of the Court of Appeal (*supra*). Nonetheless Mr. Oliver pressed on and finally had to give way to the judge, and the matter concluded.<sup>7</sup>

As Chief Judge of this province, on reflection on the matters that came before Your Lordship and the court and particularly on the decision of Mr. Justice Tysoe not to allow Mr. Oliver to go further with his wrongful conversion of Mr. Gaffney's property, there should be a letter from you to Mr. R. Keith Oliver that the property be returned to Mr. Gaffney.

Yours truly,



Anthony J. Jasich LL.B

Enclosures:

- (1) Meiklem's findings dated August 31, 2006
- (2) *Harmeling vs. Harmeling* [1978] 5WWR 688;
- (3) *Harmeling vs. Harmeling* [1980] 6WWR 771
- (4) *Phillips vs. Phillips* (Victoria No. 31/79)
- (5) Transcript of the Hearing of Nov. 29, 2007
- (6) Working Paper No. 58 Co-ownership of Land by Newbury J.A.;
- (7) Transcript of December 17, 2007 before Tysoe, J.A.

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<sup>7</sup> Transcript of December 17, 2007 before Tysoe, J.A.