

The Law Society

Reply to: Susanne Raab
Direct Line: 604-443-5729
Please refer to our File No. 20091058

CONFIDENTIAL

February 25, 2010

COPY

Mr. R. Keith Oliver
Barrister and Solicitor
#202 – 2963 Glen Drive
Coquitlam, BC V3B 2P7

MAR 01 2010

Dear Mr. Oliver:

Re: Harold C. Gaffney; Our File No. 20091058

Please find enclosed a copy of a letter from Mr. Gaffney to Mr. Cameron and Mr. McGee, dated February 3, 2010, with enclosures.

As you will see, Mr. Gaffney has raised concerns regarding his ½ interest in the proceeds of the sale of his property located at 312 – 450 Bromley Street, Coquitlam BC (the “Property”). Please provide an accounting of the net sale proceeds of the Property received by you, and advise whether you complied with the terms of the Order of Mr. Justice Bernard dated November 26, 2007 in disbursing the funds.

I would appreciate receiving your response by **March 18, 2010**. If you anticipate a problem meeting this deadline, please let me know, so we can arrange another date by which I may expect to receive your response.

I note that the complainant is not your client. Before preparing your response, please consider Chapter 5 of the *Professional Conduct Handbook*, entitled “Confidential Information”. Rule 1 of Chapter 5 reads:

“Duty of confidentiality

1. A lawyer shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, regardless of the nature or source of the information or of the fact that others may share the knowledge, and shall not divulge any such information unless disclosure is expressly or impliedly authorized by the client or is required by law or by a court.”

However, in the event it is necessary for you to disclose information that may be subject to solicitor-client privilege or the broader duty of confidentiality owed to your client, you may disclose the information to the Law Society without breaching privilege by virtue of section 88 of the *Legal Profession Act* and in fact the Law Society may require you to disclose information that may be privileged or confidential, including the client file, if deemed necessary for the proper investigation of the complaint. In that regard, you may wish to refer to *Skogstad v. Law Society of British Columbia*, 2007 BCCA 310 in which the Court of Appeal held that by virtue of section 88, a respondent is not in breach of any duty or obligation by providing solicitor and client privileged information to the Law

Society and the privilege belonging to the client is maintained intact. Relevant subsections of section 88 are reproduced below:

“Non-disclosure of privileged and confidential information

88 (1) A lawyer who, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential, or subject to a solicitor client privilege, is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.

(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.

(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.”

In accordance with our practice and pursuant to Rule 3-5(8) of the Law Society Rules, we may send to the complainant a copy of your letter of explanation and enclosures. It is not our intention to disclose any information that may be subject to privilege or confidentiality. In the event you include such information in your letter or enclosures, please clearly identify same.

While I am not in a position to assess the seriousness of this matter at this time, I recommend that you consider retaining legal counsel to assist you in responding to these allegations

Further, please be reminded of the following. In preparing your response, please keep in mind that the Law Society is subject to the *Freedom of Information and Protection of Privacy Act*. Further, this letter and any other documents relating to this complaint are not admissible as evidence in any proceedings without the consent of the author of the material or the Executive Director, as required under section 87 of the *Legal Profession Act*.

Yours truly,

Susanne Raab
 Staff Lawyer – Professional Conduct

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 Enclosures

c. Harold C. Gaffney