

The Law Society of British Columbia



Reply to: Shelley Ion
Direct Line: (604) 443-5732
Please reply to our File No. 20090771

CONFIDENTIAL

September 2, 2009

Mr. Harold C. Gaffney
#403 – 567 Lonsdale Avenue
North Vancouver, BC
V7M 2G6

Dear Mr. Gaffney:

Re: D. Ross McGowan; Our File No. 20090771

I write further to Lynne Knights' letter to you dated August 25, 2009 to advise that your complaint about Mr. Ross McGowan has been referred to me for review.

In essence, you complain that Mr. McGowan has failed to provide you with a satisfactory response as to what money orders he holds on behalf of his client CIBC, which money orders you sent to CIBC for your mortgage, despite your having been repeatedly told by CIBC that there was no money owing on the mortgage. I understand that CIBC may have taken the position that some of the funds you sent should be applied to a personal outstanding debt they say you owed, and I presume this relates to the six money orders you referenced in your July 16, 2009 email to Mr. McGowan, which were not included in the money orders photocopied for you as being those still held by Mr. McGowan.

In your August 21st complaint letter you take the position that not only do you not owe CIBC any personal debt, but you now appear to acknowledge that you do not owe any monies towards your mortgage. In any event, those are not matters that I can or need to resolve, as they are issues between you and CIBC. I have no jurisdiction over CIBC; rather, the Law Society's function is to determine whether Mr. McGowan acted in any way improperly, and in my view there is no evidence whatsoever to indicate that he has done so. I can advise that I have spoken with Mr. McGowan and he has advised that the money ordered photocopied and sent to you are all that he has ever had in his possession.

Those money orders being held by Mr. McGowan or his firm are not held "in trust"; rather, they were sent to Mr. McGowan by his client CIBC for 'safekeeping', which is not the same thing. Mr. McGowan is properly acting on his client's instructions. I am not in a position to determine whether you are entitled to the return of your money orders, a matter that is in essence between you and CIBC, as the Law Society has no authority to adjudicate such disputes. Only a court can do so. Accordingly, you may thus wish to seek legal advice. That said, I note that Mr. McGowan advised you that his instructions were to return to you the money orders he held, provided you signed a Release. I appreciate you say the Release was not enclosed with Mr. McGowan's letter as he indicated, and that he has not responded to your follow-up July 16, 2009 email. Mr. McGowan has advised me that as you have sent voluminous correspondence by email to various members of his firm, his firm has blocked your email address and that he advised you that he would only respond to you as they deemed appropriate. Mr. McGowan has signed and sent you the Release and I understand you take issue with its terms. That however is not an issue for the Law Society. As noted above, the negotiation of the return of those money orders is a civil matter between you and CIBC that is outside the jurisdiction of the Law Society.

I acknowledge receipt of copies of emails dated August 26 and August 27 exchanged between yourself, Mr. Jasich and Mr. McGowan, as well as a faxed memo dated August 31, 2009 from yourself (containing enclosed copies of the above-mentioned correspondence of August 26 and August 27) to Mr. McGee and Mr. Cameron of the Law Society. While addressed to Mr. Tim McGee and Mr. Cameron, they have been forwarded to me for acknowledgement and any appropriate response. I have considered the correspondence and I remain of the view that this is a civil matter outside the jurisdiction of the Law Society and there are no professional conduct concerns arising.

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Mr. Harold Gaffney
September 2, 2009
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For the reasons noted above, I am closing this file pursuant to Rule 3-5(2)(a) of the *Law Society Rules*, which reads as follows:

Investigation of complaints

3-5 (2) The Executive Director may decline to investigate a complaint or other matter, if the Executive Director is satisfied that the complaint or matter

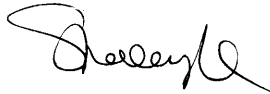
(a) is outside the jurisdiction of the Society.

Please note that this letter and other documents relating to this complaint are not admissible as evidence in any proceedings, except Law Society proceedings, without the consent of the author of the material or the Executive Director required pursuant to section 87 of the *Legal Profession Act*.

To assist the Law Society in ensuring that its investigation of complaints is fair and effective, I am enclosing a questionnaire I hope you will complete and return in the enclosed envelope, or, alternatively, you may complete the Survey online at:

<http://alt.lawsociety.bc.ca/forms/pc/ccomplaint.cfm>.

Yours truly,



Shelley I. [redacted]
Staff Lawyer - Professional Conduct

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Enclosures

c. D. Ross McGowan

The Law Society
of British Columbia



Reply to: Shelley Ion
Direct Line: (604) 443-5732
Please reply to our File No. 20090771

CONFIDENTIAL

September 2, 2009

Mr. D. Ross McGowan
Barrister and Solicitor
#1200 Waterfront Centre
200 Burrard Street, P.O. Box 48600
Vancouver, BC
V7X 1T2

Dear Mr. McGowan:

Re: Harold Gaffney; Our File No. 20090771

Further to our telephone conversation on August 25, 2009, I confirm that we have received, and closed, a new complaint concerning you from Mr. Harold Gaffney. In this regard, I enclose a copy of Mr. Gaffney's letter dated August 21, 2009, with enclosures, along with a copy of my letter of today's date to Gaffney indicating that his expressed concerns are outside the jurisdiction of the Law Society. I am aware that you have re-sent another Release to Mr. Gaffney, in light of his advice that it was not included in your earlier letter. I am also aware that Mr. Gaffney takes issue with the ambit of the Release and you will see I have addressed that in my letter to him.

Accordingly, we now regard this matter as closed. This letter is for your information only, and no response is required.

Please note that this letter and other documents relating to this complaint are not admissible as evidence in any proceedings, except Law Society proceedings, without the consent of the author of the material or the Executive Director required pursuant to section 87 of the *Legal Profession Act*.

To assist the Law Society in ensuring that its investigation of complaints is fair and effective, I am enclosing a questionnaire I hope you will complete and return in the enclosed envelope, or, alternatively, you may complete the Survey online at:

<http://alt.lawsociety.bc.ca/forms/pc/lcomplaint.cfm>.

Yours truly,

Shelley Ion
Staff Lawyer - Professional Conduct

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Enclosures

c. Harold Gaffney

Survey

Complaint Survey (Complainant form)

The Law Society
of British Columbia



845 Cambie Street
Vancouver, BC
Canada V6B 4Z9
Telephone: 604 669-2533
Toll-free in BC: 1-800-903-5300
Fax: 604 605-5399
TTY: 604 443-5700
Email: professionalconduct@sbc.org
Website: www.lawsociety.bc.ca

The Law Society wants to ensure that the investigation and assessment of complaints against lawyers is as fair and effective as possible. The purpose of this questionnaire is to provide you with the opportunity to comment on the handling of your complaint to the Law Society. We hope that you will take a few minutes to complete this questionnaire.

Once you have completed this questionnaire, please return it in the stamped addressed envelope provided.

Expectations

We would like to know what you expected the Law Society would do when you made your complaint. Did you expect that the Law Society would ... *(please check all that apply)*

- Find you a new lawyer?
- Compensate you financially?
- Reduce the lawyer's fees?
- Change a court order?
- Get involved in your court case?
- Provide you with a hearing for your complaint?
- Give you a second opinion on your case?
- Make a note of your complaint?
- Make the lawyer do something for you?
- Investigate your complaint?
- Punish the lawyer?
- Other *(please specify)* _____

Process

We would like to know how satisfied you were with the way in which we dealt with your complaint. Please indicate your degree of satisfaction with each of the following:

	Satisfaction		
Your complaint was dealt with fairly	<input type="checkbox"/> Not at all	<input type="checkbox"/> Somewhat	<input type="checkbox"/> Very
Your complaint was dealt with quickly	<input type="checkbox"/> Not at all	<input type="checkbox"/> Somewhat	<input type="checkbox"/> Very
Your complaint was dealt with courteously	<input type="checkbox"/> Not at all	<input type="checkbox"/> Somewhat	<input type="checkbox"/> Very
Your complaint was dealt with thoroughly	<input type="checkbox"/> Not at all	<input type="checkbox"/> Somewhat	<input type="checkbox"/> Very
You were kept informed about developments	<input type="checkbox"/> Not at all	<input type="checkbox"/> Somewhat	<input type="checkbox"/> Very