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Borden Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
1200 Waterfront Centre  
200 Burrard Street, P.O. Box 48800  
Vancouver, B.C., Canada V7X 1T2  
tel: (604) 687-5744 fax: (604) 687-1415  
www.blgcanada.com

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D. Ross McGOWAN  
direct tel: (604) 640-4173  
direct fax: (604) 622-5873  
email: rmcgowan@blgcanada.com

gstephen.alsace@cibc.com

Stephen Alsace  
Canadian Imperial Bank of Commerce  
Commerce Court West, 15th Floor  
Toronto, ON M5L 1A2

Dear Sirs/Mesdames:

**Re: Foisting of Funds onto CIBC by Harold Gaffney**

We have conducted a background investigation of the facts and circumstances pertaining to the dealings of Harold Cecil Gaffney ("Gaffney"). We have also conducted some background investigation with respect to his "pro bono" lawyer, Anthony J. Jasich ("Jasich").

**I. Recommendations**

It is our view that this situation arises from two independent sources: Mr. Gaffney and Mr. Jasich. It will be necessary to address both of these individuals to mitigate against further abuse. We also caution you that we have reason to believe that both of these individuals are psychologically unstable. With respect to Mr. Gaffney, we raise caution that his status could escalate to violent behaviour and encourage you to avoid identifying any local point of contact for him.

The goal for CIBC should be to avoid any substantive direct engagement with either individual and respond only to the extent expressly required. We further recommend that a formal complaint be filed with the Law Society of British Columbia in relation to Mr. Jasich to initiate a conduct review of his practice. Based on our private informal discussions, we understand that this move would be welcomed by the LSBC.

With respect to the money orders as are being foisted on CIBC, we suggest that the lowest cost and most practical approach for dealing with those would be to issue a final letter to him substantially in the form attached informing him that all money orders delivered to date have been refused and shall in due course be marked by CIBC "Acceptance Refused". To the extent that future money orders are received, they should also be marked on their face as "Acceptance Refused". Copies of such can be forwarded to our offices to be placed on our file to preserve evidence in response to potential proceedings. We recommend against any further communication or response to Mr. Gaffney as such will simply create the platform for further pursuit by Mr. Gaffney. If he initiates any proceedings against CIBC, we recommend that we

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be instructed from the outset of those proceedings to have the proceedings struck and that we then (and only then) take proceedings to have him declared a vexatious litigant.

**A. Status of Mr. Jasich**

Mr. Jasich is a retired member of the Law Society of British Columbia, having been called in 1957. He is allowed to continue to practice as a retired member provided that he does not accept fees for his services.

We have been in contact with the Law Society of British Columbia to discuss his situation and are informed that they are aware of concerns being raised with respect to him and that they would be prepared to conduct a practice review of him if CIBC files a formal complaint about his outrageous comments as contained in the letter dated September 29, 2008. A practice review can lead to a suspension of his right to practice law, even on the 'pro bono' basis alleged by Mr. Gaffney.

As part of the longer term strategy for dealing with Mr. Gaffney we suggest that we elicit the cooperation of the Law Society of British Columbia for the purposes of a practice review of Mr. Jasich. In that regard we require your instructions to provide a copy of Mr. Jasich's letter of September 29, 2008 to the Law Society of British Columbia. We further propose that a copy of Mr. Gaffney's letter of September 29, 2008 likewise be delivered to the Law Society. The letter from Mr. Gaffney has apparently been copied to multiple third parties and as such does not qualify as protected under PIPEDA. Further, as it alleges criminality and conspiracy as between Mr. Oliver and CIBC, it places CIBC in the position where it is entitled to defend itself from these allegations through third party disclosure and an appropriate investigation.

The effect of the foregoing should be to disconnect Mr. Gaffney from one of the people as is likely fanning the flame of his conspiracy theories.

We recommend that a formal complaint be lodged with the Law Society Conduct Review Panel so as to initiate that process. I attach a copy of a draft letter for your review.

**B. Dealings with Keith Oliver**

Independently, we have contacted Keith Oliver, the lawyer defamed in Mr. Jasich's letter as well as defamed by Mr. Gaffney. We have had previous dealings with Mr. Oliver and have always found him to be reasonable, thoughtful and of good integrity. We have no reason to believe any of the allegations of fraud, theft or conspiracy as are directed at Mr. Oliver. In our conversation with Mr. Oliver he informed us that he obtained an Order at the Court of Appeal declaring Mr. Gaffney a vexatious litigant. He is thus precluded from initiating any appeal without leave of the court. The order does not preclude initiation of proceedings at Supreme Court of B.C., but a similar order could well be obtained at that level if Mr. Gaffney persists in advancing proceedings. (We are not recommending that CIBC pursue such at this stage). We have also conducted a review of the numerous decisions wherein Mr.

Gaffney has brought vexatious claims pertaining to the circumstances of the divorce, the bankruptcy of his wife, and the ultimate sale of the property, that has led to the mortgage being discharged. We are informed that Mr. Oliver has several boxes of litigation materials amassed from his dealings with Mr. Gaffney.

With respect to the funds referred to in Mr. Jasich's letter we are aware that Mr. Oliver has an outstanding Bill of Costs in his favour that has not been paid. Without disclosing any possibly confidential information to Mr. Oliver we made enquiry as to whether he would be interested in making recovery on the costs as have been awarded in his favour. He informs us that based upon the long and difficult dealings with Mr. Gaffney that he has no appetite for any continued pursuit of the issue. In the absence of Mr. Oliver pursuing the issue, we see no benefit to CIBC in pursuit of this aspect of the issue further. If however, funds are ever paid into court, we recommend that notice of such be given to Mr. Oliver.

### C. Dealings with Mr. Gaffney

We have been further informed by Mr. Oliver that Mr. Gaffney has intimated subtle threats to him during the course of these proceedings. For instance, Mr. Gaffney made Mr. Oliver aware that Mr. Gaffney was at one time living with a person who had physically attacked and threatened to decapitate a lawyer. (The person referred to is believed to be an elderly man that attacked and left a local young lawyer permanently brain injured during a bizarre incident at New Westminster Court Registry about 3 years ago. The lawyer was attacked by with a scythe by the elderly man, upset about a divorce proceeding.) Thus, Mr. Gaffney should be considered unstable and potentially dangerous and we encourage you to minimize any local branch contact as between your branch personnel and Mr. Gaffney.

While we note that the vast majority of 'vexatious litigants' pose little threat of physical harm, each person must be viewed in the context of the proceedings and the stage of their mental instability. We have studied and dealt with countless vexatious litigants over the years and there are recognized patterns in their delusional logic. Here Mr. Gaffney is embroiled in what he sees as a divorce, the bankruptcy of his wife and a world-wide conspiracy both aimed at him personally and within the context of some intentional global economic meltdown. He cannot be reasoned with only any level other than through his delusions and as such no effort should be made to do so. (I attach a short paper on vexatious litigants that I prepared several years ago as part of an internal law firm training program to assist younger lawyers in dealing with these very troubling sorts.)

We strongly recommend against any significant reply to Mr. Gaffney as this will more likely than not further redirect his conspiracy theories upon CIBC. While there is no guarantee that the strategy of minimal engagement will avoid his psychotic delusions from escalating, we can assure you that any significant response will certainly give rise to a multiplicity of claims being advanced against CIBC.

**D. Litigation Options**



We have considered the option of delivery of the proceeds of the money orders to court. CIBC could bring application in the proceedings as remain outstanding in the Supreme Court of British Columbia involving Mr. Gaffney and stipulate in the application to the court that CIBC requests that the funds represented by the money orders be remitted to the credit of the Supreme Court action as security for any cost awards made or outstanding, subject to deduction in favour of CIBC of the costs of the application into court. If you decide to pursue this option, we would at the time of the application request a further declaratory order at the time of the application that any future funds delivered by Mr. Gaffney that are not on account of a current or outstanding indebtedness owing by Mr. Gaffney to CIBC be likewise remitted into court without further order. The effect of this will be to obtain an order that allows CIBC to deduct its fees for the application, deliver over the net proceeds represented by the money orders minimizing the risk of claim, and develop a longer term solution for any future money orders that may yet be delivered by Mr. Gaffney to CIBC. It may be possible to seek as a term of such application a limited order declaring Mr. Gaffney to be a vexatious litigant to the extent necessary to restrict any claim he might want to bring against CIBC, its subsidiaries, and its employees or solicitors, (including me and my firm). We have obtained such orders on behalf of CIBC in the past.

However, as set forth above, while this is a valid option for pursuit, it clearly engages CIBC in direct confrontation with Gaffney and if the court is not prepared to grant the order for 'vexatious litigant' status, we will be placed on a long and costly path of twisted applications.

We look forward to receiving your instructions with respect to the proposed strategy. If you want to review any of the multiplicity of cases and decisions involving Mr. Gaffney we have those in our possession and we would be pleased to forward them to you.

Yours truly,

Borden Ladner Gervais LLP

By:

D. Ross McGowan

DRM/mp  
Enclosure