

Citation issued: September 21, 2009

THE LAW SOCIETY OF BRITISH COLUMBIA
In the matter of the *Legal Profession Act*, SBC 1998, c. 9
and a hearing concerning
ANTHONY JOSEPH JASICH
RESPONDENT

AGREED STATEMENT OF FACTS

Member's Background

1. The respondent, Anthony Joseph Jasich (the "Respondent"), was admitted to the bar of the Province of British Columbia on May 16, 1957.
2. From the date of his call to August 1, 1990, the Respondent practiced at various times with the firms Ryan & Company and McMaster Bray Cameron & Jasich, and also as a sole practitioner.
3. On August 1, 1990, the Respondent assumed non-practicing status. In 2005, he applied for and was granted "retired member" status. He has been a retired member of the Law Society since January 1, 2006.

Citation

4. The Citation herein was authorized by the Discipline Committee on May 7, 2009. On July 21, 2009, the Discipline Committee authorized an extension of time to issue and serve the Citation to September 30, 2009.
5. The Citation was issued September 21, 2009 (**Attachment 1**).

Background to Citation

Mortgage and Property

6. In 2004, Harold Gaffney ("Gaffney") and his then wife Sheila Gaffney ("Sheila") financed a property at 312 - 450 Bromley Street, Coquitlam, B.C. (the "Property"). A mortgage in favour of CIBC Mortgages Inc. ("CIBC") for \$140,082.50 was registered on title to the Property on August 9, 2004 (the "Mortgage"). (**Attachment 2**)

Gaffneys' Litigation

7. The Gaffneys became involved in family litigation (the "Proceeding") and Sheila declared bankruptcy in May 2005. Initially, her interest in the Property was transferred to her Trustee in Bankruptcy, but it was transferred back to her in November 2006.

Court Orders

8. On April 25, 2007, Mr. Justice Crawford of the Supreme Court of British Columbia ordered, *inter alia*, partition and sale of the Property and ordered that Sheila have exclusive conduct of the sale (**Attachment 3**, the "April 25 Order"). Proceeds of the sale were to be divided equally between the parties, after payment of the registered financial charges, taxes and real estate commission. Sheila was represented by R. Keith Oliver. Gaffney did not have legal counsel, but appeared with a "spokesperson" named Tina Zanetti.
9. On May 22, 2007, Mr. Justice Crawford made a further order *inter alia*, setting the terms of the April 25 Order and dismissing Gaffney's application to adjourn the Petition (**Attachment 4**, the "May 22 Order").
10. On September 5, 2007, Madam Justice Baker made an order dismissing Gaffney's applications for an adjournment and an injunction, and setting terms for access to the Property by the realtor (**Attachment 5**, the "September 5 Order").


11. On November 2, 2007, Mr. Justice Sigurdson made an order dismissing Gaffney's motions to adjourn the hearing of the Petition and to cross-examine Noelle Neale (the realtor), and again setting terms for access to and viewing of the Property (**Attachment 6**, the "November 2 Order"). The Respondent was described in the November 2 Order as one of Gaffney's "spokespersons."
12. On November 20, 2007, Madam Justice Ballance made an order granting Sheila access to the Property and specified terms of access (**Attachment 7**, "November 20 Order").
13. On November 26, 2007, Mr. Justice Bernard made an order approving a contract of sale dated November 6, 2007 for sale of the Property to Mariana Oviedo Ovando and Brent Tremain (the "Purchasers") for \$225,000 (**Attachment 8**, the "November 26 Order"). William Cadman represented the Purchasers.

Court of Appeal


14. Gaffney subsequently appealed and/or applied for variations of a number of the court orders in the Proceeding. He was heard by the Court of Appeal on November 29, 2007, which dismissed his applications and appeal and in so doing commented that Gaffney had "made many unfounded and vexatious allegations, not only against Mrs. Gaffney, but also against her counsel, the trustee in bankruptcy, and others." (**Attachment 9**)

Transfer of Property/Discharge of Mortgage

15. An amendment to the legal description of the Property was made on December 12, 2007 (**Attachment 10**).
16. On or about December 14, 2007, title to the Property was registered in the Land Title Office in the name of the Purchasers (**Attachment 11**).
17. The Mortgage was discharged from the Property on or about January 4, 2008. A copy of the Form C Release, filed electronically by Oliver & Co., is attached as **Attachment 12**.

18.  ABC Online title search dated February 19, 2009 shows that the Mortgage was cancelled on January 4, 2008 (**Attachment 13**).

Communications between Respondent/Gaffney and CIBC

19. From approximately December 2007 to January 2009, the Respondent acted for Gaffney, who continued to make monthly payments to CIBC in respect of the Mortgage, despite the fact that the Mortgage had been paid out and discharged from title to the Property. 
20. In February 2008, the Respondent wrote two letters to the CEO of CIBC, Gerry McCaughey, advising that he was acting for Gaffney and requesting that CIBC provide discharge documents and proof that the Mortgage had been paid out (**Attachment 14**).
21. On February 25, 2008, Clarence Layne, Director of Executive Client Relations at CIBC, replied to the Respondent, advising that CIBC no longer had an interest in the Property and enclosing a copy of a discharge statement showing the Mortgage had been discharged (**Attachment 15**).
22. On March 28, 2008, the Respondent wrote to Tammy Peters, Branch Manager of the CIBC at 1036 West Georgia Street Vancouver, enclosing a money order payable to CIBC from Gaffney for \$917.76, representing a mortgage payment for the month of April 2008 (**Attachment 16**).
23. On April 14, 2008, CIBC (Layne) responded to the Respondent's letter of March 28, 2008, enclosing a mortgage discharge statement and property title search that confirmed that the CIBC Mortgage was no longer on title to the Property. Also enclosed with that letter were four cheques for \$917.76 each that had been remitted by Gaffney to CIBC for mortgage payments for the months of December 2007 and January to March 2008. CIBC asked the Respondent to return the funds to his client (**Attachment 17**).

24. On April 22, 2008, the Respondent wrote to CIBC advising that his client had taken the returned cheques, along with a cheque representing a mortgage payment for the month of May 2008, and served them upon a branch manager at a Vancouver CIBC branch. The Respondent stated in his letter, "we have no payment statements from CIBC and my client is entitled to know the payout figure of his mortgage, which CIBC has refused to date to provide" (**Attachment 18**).

25. On June 11, 2008, CIBC wrote to the Respondent, stating, in part (**Attachment 19**):

We have advised you clearly on a number of occasions that CIBC no longer has any interest in the above-noted property. We do not have any account and will not be negotiating the money orders. Please have your client cease sending payments.

A money order payable to Gaffney for \$917.76 was returned with the letter, with a request that the Respondent return the funds to his client.

26. On June 20, 2008, the Respondent delivered another letter to Ms. Peters at CIBC, with a mortgage payment for the month of July 2008. In this letter, the Respondent stated, in part:

To date Mr. Gaffney has not received from CIBC any of the required documents showing proof of the pay out of his mortgage and until CIBC provides true copies, my client will continue to pay his mortgage in form of promissory notes, as required.

The Respondent also returned the \$917.76 money order payable to Gaffney that had been sent by CIBC with its June 11 letter, claiming it "was and is a promissory note for the mortgage payment for the month of January 2008..." (**Attachment 20**).

27. On the same date, the Respondent wrote to CIBC requesting a copy of the discharge of the mortgage, a copy of the payment of the mortgage, a Statement of Adjustments from Keith Oliver and William Cadman and a Certificate of Sale.

The Respondent advised that until he was provided with these documents, his client would continue to make mortgage payments (**Attachment 21**).

28. Around this time, CIBC began communicating with the Respondent through its in-house legal counsel, George Alsace.
29. On September 29, 2008, the Respondent wrote to CIBC (Peters/Alsace), enclosing a mortgage payment for the month of October 2008. In this letter, the Respondent stated, in part (**Attachment 22**):

As far as my client is concern he will continue to service his mortgage with CIBC, until CIBC finally shows a true copy of a mortgage payout and showing that my client is no longer liable for this mortgage, which to date CIBC has failed to do so.

30. When the Respondent wrote his letter of September 29, 2008, CIBC had already provided him with a copy of the discharge statement with its letters dated February 25, 2008 and April 14, 2008.
31. In his September 29 letter to CIBC, the Respondent in effect alleged that another lawyer was party to a fraud:

It is apparent that here there is a massive theft of equity in the fraudulent transfer of property transaction that Mr. Oliver is attempting to get CIBC to go along with, attempting to get my client Harold Gaffney to default on his mortgage. ... There is a massive theft of equity by major institutions worldwide occurring which is caused mainly by real estate and mortgage fraud, which is classified by the FBI to be the "fastest-growing white collar crime in America" and this would include Canada.

32. Also on September 29, 2009, Gaffney also wrote to CIBC (Alsace), claiming that CIBC was "aiding and abetting lawyers in Canada and most likely in the USA to commit real estate fraud". That letter, which was copied to the Respondent, was also copied to a number of individuals and government agencies including Mark J. Carney (Governor of the Bank of Canada), the US Justice Department, the FBI, the Canadian & USA SEC [sic], and "all the duly elected Members of Parliament [and] all the duly appointed Senators". (**Attachment 23**)

33. The Respondent wrote further letters to CIBC on October 14, 2008 and October 20, 2008, requesting a copy of "a legitimate document indicating the date and time CIBC received the funds and the source of the funds from which my client's mortgage was allegedly paid out" (**Attachment 24**). CIBC (Alsace) responded by letter dated October 22, 2008 (**Attachment 25**).
34. On November 6, 2008, CIBC (Alsace) wrote to the Respondent, requesting that the Respondent accept receipt of the money orders that CIBC had attempted to return, and asking the Respondent to instruct Gaffney to cease sending further payments for the mortgage (**Attachment 26**). In this letter, Mr. Alsace wrote, in part:
- ...Mr. Layne has already previously provided confirmation and evidence that the referenced mortgage noted above has been repaid and closed, accordingly we can confirm that his client is not responsible for repayment of this obligation.
35. Also on November 6, 2008, CIBC (Alsace) wrote a second letter to the Respondent in which he enclosed another copy of the discharge statement and a property title search. CIBC advised in this letter that Gaffney had no further obligation to remit payments in relation to the Mortgage (**Attachment 27**).
36. On November 7, 2008, CIBC (Alsace) wrote to the Law Society and complained about the Respondent's conduct (the "Complaint") (**Attachment 28**).
37. At about this time, Gaffney was making allegations of fraud against CIBC and others to various authorities including the US Security Exchange Commission, the US Justice Department and the FBI (**Attachment 29**). On or about November 6, 2008, CIBC prohibited Gaffney from entering the premises of any CIBC branch by issuing a notice under the *Trespass Act* (**Attachment 30**).
38. On November 17, 2008 and December 19, 2008, the Respondent sent two more money orders to CIBC, representing mortgage payments for the months of December 2008 and January 2009. Despite having already received proof of the

payout and discharge of the Mortgage, the Respondent requested that CIBC provide him with this documentation (**Attachment 31**).

39. On January 13, 2009, Gaffney wrote to various parties, indicating that he would be continuing to service his mortgage until the matter was "cleared up by CIBC" (**Attachment 32**).
40. Despite several attempts to return the mortgage payments to Gaffney and/or the Respondent, CIBC was unsuccessful in doing so. CIBC applied some of the payments to an outstanding loan in Gaffney's name and Borden Ladner Gervais held the other payments (**Attachment 33**).

Failure to Respond

41. On January 23, 2009, Ruth Long, the Law Society staff lawyer originally assigned to investigate the Complaint, wrote to the Respondent, requesting a response within three weeks (**Attachment 34**).
42. On January 30, 2009 and February 26, 2009, the Respondent replied to Ms. Long, but neither of these letters provided a substantive response (**Attachment 35**).
43. The investigation of the Complaint was transferred to another staff lawyer at the Law Society, Shelly Ion. On February 26, 2009 and March 4, 2009 Ms. Ion wrote follow up letters to the Respondent, requesting a substantive response to the Complaint by March 12, 2009 (**Attachment 36**).
44. Ms. Ion received no response to her letters. On March 17, 2009 Ms. Ion wrote a final letter to the Respondent, which stated, in part (**Attachment 37**):

May I please have a response to my letters dated February 26 and March 4, 2009?

...

The Discipline Committee has directed that when a member fails to respond to communications from the Law Society the member's attention be drawn to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, which reads "A lawyer shall reply promptly to

any communication from the Law Society". Please be advised that any failure to respond to the Law Society may be referred to the Chair of the Discipline Committee pursuant to the new summary hearing process. Details of this process may be found in the Law Society Rules.

...I expect to receive a substantive response to my February 26, 2009 letter on or before **March 29, 2009**. If you do not, I expect I will refer this matter to the Discipline committee, which may consider both your failure to provide a substantive response as required as well as your conduct in the underlying matter.

- 45. To date, the Respondent has not provided a substantive response to Ms. Ion's February 26, 2009 letter.

Admissions

- 46. The Respondent admits that he improperly continued to forward monthly mortgage payments to CIBC on behalf of Gaffney when he knew the Mortgage had been discharged from title to the Property, despite such conduct being prejudicial to both his client and to CIBC, and despite numerous requests from CIBC to cease and desist.
- 47. The Respondent admits that he made allegations that CIBC and another lawyer in the Proceeding (R. Keith Oliver) were involved in criminal activity, without any evidence to support such allegations.
- 48. The Respondent admits that he failed to respond to the Law Society in respect of its letters dated January 23, 2009; February 26, 2009; March 4, 2009 and March 17, 2009.
- 49. The Respondent admits that his conduct admitted herein constitutes conduct unbecoming a lawyer and professional misconduct.

Respondent

Counsel for the Law Society of
British Columbia

Date: _____

Date: _____

Attachments:

1. Citation issued September 21, 20093
2. *Land Title Act* Form B Mortgage dated August 9, 2004
3. Order of the Honourable Mr. Justice Crawford dated April 25, 2007
4. Order of the Honourable Mr. Justice Crawford dated May 22, 2007
5. Order of the Honourable Madam Justice Baker dated September 5, 2007
6. Order of the Honourable Mr. Justice Sigurdson dated November 2, 2007
7. Order of the Honourable Madam Justice Balance dated November 20, 2007
8. Order of the Honourable Mr. Justice Bernard dated November 26, 2007
9. Oral Reasons for Judgment (*Gaffney v. Gaffney*, 2007 BCCA 595)
10. Order dated December 12, 2007
11. *Land Title Act* Form 17 dated December 14, 2007
12. *Land Title Act* Form C Release dated January 4, 2008
13. BC Online Title Search dated February 19, 2009
14. Letters from Jasich to CIBC (McCaughey) dated February 14, 2008, and February 25, 2008
15. Letter from CIBC (Layne) to Jasich dated February 25, 2008
16. Letter from Jasich to CIBC (Peters) dated March 28, 2008
17. Letter from CIBC (Layne) to Jasich dated April 14, 2008
18. Letter from Jasich to CIBC (Layne) dated April 22, 2008
19. Letter from CIBC (Layne) to Jasich dated June 11, 2008
20. Letter from Jasich to CIBC (Peters) dated June 20, 2008
21. Letter from Jasich to CIBC (Layne) dated June 20, 2008
22. Letter from Jasich to CIBC (Peters/Alsace) dated September 29, 2008
23. Letter from Gaffney to CIBC (Alsace) dated September 29, 2008
24. Letters from Jasich to CIBC (Alsace) dated October 14, 2008, and October 20, 2008
25. Letter from CIBC (Alsace) to Jasich dated October 22, 2008
26. Letter from CIBC (Alsace) to Jasich dated November 6, 2008
27. Letter from CIBC (Alsace) to Jasich dated November 6, 2008
28. Letter from CIBC (Alsace) to Law Society dated November 7, 2008
29. Letter from Gaffney to CIBC and others dated October 31, 2008
30. Letter from CIBC (Layne) to Gaffney dated November 6, 2008
31. Letters from Jasich to CIBC (Peters) dated November 17, 2008, and December 19, 2008
32. Letter from Gaffney to CIBC and others dated January 13, 2009
33. E-mail exchange between Ruth Long and Alsace dated January 16, 2009
34. Letter from Law Society (Long) to Jasich dated January 23, 2009
35. Letters from Jasich to Law Society (Long) dated January 30, 2009 and February 26, 2009
36. Letters from Law Society (Ion) to Jasich dated February 26, 2009, and March 4, 2009

37. Letter from Law Society (Ion) to Jasich dated March 17, 2009