



CONFIDENTIAL

April 21, 2011

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

Dear Mr. Gaffney:

**Re: R. Keith Oliver**

Deborah Armour  
Chief Legal Officer

The Discipline Committee has received the report of the Conduct Review Subcommittee concerning Mr. Oliver's conduct, a copy of which is enclosed. The report contains the findings of fact, conclusions, and recommendations of the Subcommittee. The Discipline Committee has adopted the recommendation of the Subcommittee that no further action be taken against Mr. Oliver. The complaint file will now be closed.

Under the Law Society Rules, the Conduct Review Report will now become part of the member's professional conduct record.

I draw your attention to section 87 of the *Legal Profession Act* concerning privileged matters, and in particular subsections 87(2), (3), and (4), which read:

**Certain matters privileged**

87 (1) In this section:

"**proceeding**" does not include a proceeding under Part 2, 3 or 4;

"**report**" includes any document, minute, note, correspondence or memorandum created or received by a person, committee, panel or agent of the society in the course of an investigation, audit, inquiry or hearing, but does not include an original document that belongs to a complainant or respondent or to a person other than an employee or agent of the society.

(2) If a person has made a complaint to the society respecting a lawyer, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant.

(3) If a lawyer responds to the society in respect of a complaint or investigation, neither the lawyer nor the society can be required to

disclose or produce the response or a copy or summary of it and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer, even though the executive director may have delivered a copy or a summary of the response to the complainant.

(4) If a person, committee or panel acting under the authority of this Act makes a report or conducts an investigation, audit, inquiry or hearing into the conduct, competence or credentials of a lawyer, that report must not be required to be produced and is not admissible in any proceeding except with the written consent of the executive director.

(5) The society, its employees or agents, or persons who are members of committees or panels established or authorized under this Act must not be compelled to testify in any proceeding or to disclose information that they may have acquired during the course of an investigation, audit, inquiry, hearing or the performance of other duties authorized by this Act or the rules.

If you deem it necessary to seek to introduce the Report into evidence, you will need to obtain all of the appropriate consents under section 87, including that of the Law Society.

To assist the Law Society in ensuring that its discipline processes are fair and effective, I am enclosing a questionnaire I hope you will complete and return in the enclosed envelope. Alternatively, you may complete the Survey online at: <http://alt.lawsociety.bc.ca/forms/disc/ccomplaint.cfm>. To sign in, you will need to fill out your last name and the Complaint File number 20100093 thank you very much for your assistance in this evaluation.

Thank you for bringing this matter to the attention of the Law Society.

Yours truly,



Deborah Armour  
Chief Legal Officer

DA/Im  
Encls.

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *LEGAL PROFESSION ACT* AND  
IN THE MATTER OF A CONDUCT REVIEW CONCERNING**

**R. KEITH OLIVER**

(a member of the Law Society of British Columbia)

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Report of Conduct Review Subcommittee to Discipline Committee pursuant to Rule 4-9

**Conduct Review Subcommittee:** Herman Van Ommen  
Alan M. Ross

**Date:** January 26, 2011

**Place:** 845 Cambie Street

**Who attended:** Harold Gaffney and Tina Zanetti

**Purpose of the Conduct Review:**

1. On November 4, 2010, pursuant to Rules 4-4(1)(b), 4-7 and 4-9, the Discipline Committee required R. Keith Oliver (the "Member") to appear before the Conduct Review Subcommittee to discuss his professional obligation to scrupulously comply with Court Orders and to discuss options open to him when facing difficult circumstances in his practice.

**Preliminary Matters:**

2. The Member attended the Conduct Review without counsel. He was advised of his right and the advisability of, obtaining legal counsel to represent him at this Conduct Review. The Member confirmed his desire to proceed without counsel.
3. The Subcommittee reviewed the direction of the Discipline Committee and the options available to it in respect of complaints. We also reviewed the process under Rule 4-9, including the preparation of this report and the Member's entitlement within 30 days of receipt to provide a written response if the Member disputes any part of this report. The Subcommittee also told the Member of the various options available to it on the conclusion of the Conduct Review, including a recommendation that the Discipline Committee take no further action or that it take further action by authorizing the issuance of a citation or referring the Member to the Practice Standards Committee.
4. The Complainant, Howard Gaffney, attended the Conduct Review. The Complainant was accompanied by Tina Zanetti (with the Member's consent) who assisted the Complainant. The Complainant was the self-represented adverse party in the litigation giving rise to the order in question.

## Background:

5. Mr. Oliver was called to the Bar in 1981 and practices primarily in the areas of matrimonial and real estate law. He acted for Sheila Gaffney (“SG”) in respect of litigation dealing in part with the partition and sale of property owned by SG and her now ex-husband, the complainant, Harold Gaffney (“HG”). The litigation was hard-fought and went through several levels of court including the Supreme Court of Canada. Numerous costs awards were made against HG.
6. The Order for Partition and Sale provided that, after sale, the funds were to be disbursed as follows (paraphrasing except where quoted):
  1. to clear all financial charges against title;
  2. to pay SG one half of the remaining net proceeds;
  3. to pay SG’s costs, both in the Supreme Court and Court of Appeal, “after Assessment or agreement of [HG];
  4. and the balance, if any, was to be paid to HG.
7. Following the sale of the property, the funds were paid out in accordance with paragraphs 1 and 2 of the Order. Those payments left some funds from the sale remaining in trust.
8. The member prepared draft Bills of Costs relating to all of the proceedings. In total, the amount of those Bills of Costs exceeded the funds remaining in trust. The member sent a copy of the Vesting Order and a Certificate of Result of Sale to HG. The member had previously sent the draft Bills of Costs to the complainant. In his letter the member stated:

“In the event you decide to schedule an assessment of those costs, the amounts will increase by the number of units ... awarded for the assessments, and in the case of the Special Costs awarded by the Court of Appeal, the amount will increase by the Special Costs amount for that assessment. There is no possibility of your deficit being reduced.

Since you have exhausted your avenues of appeal, please endorse your approval on the Certificate of Result of Sale and return it to me, so that it can be entered as a final document and the Court file can be closed. Should you refuse or neglect to do so, we will not be doing anything further and the Court file will remain incomplete.”
9. HG did not respond to the member’s letter. The member took the complainant’s failure to respond as HG’s “agreement” to the amounts of the Bills of Costs. On that basis, he paid out the remaining trust funds to his client.
10. HG complained about the member’s conduct.

11. It is clear that the steps taken by the member were done in an effort to save his client from incurring further legal expense to have the Bills of Costs assessed. The member did not receive any benefit from proceeding as he did. However, by doing so, he was in breach of the Court Order requiring either Assessment of the Bills of Costs, or the agreement of the complainant.

**Issues:**

12. The sole issue under examination at this conduct review was the member's action in paying out the funds to his client without having either the complainant's agreement or an assessment of the costs. It is clear that the member was attempting to act in the best interests of his client. A further appearance for an assessment of the Bills of Costs would have further reduced the payout to her. Despite that good intention, it is clear that the member paid out funds in breach of the Court Order.

**Review of Conduct/Findings:**

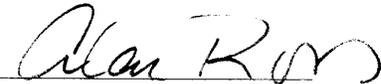
13. The Conduct Review Subcommittee went over the facts and findings with the member. The member originally saw this as an "ambiguous" situation based on his understanding that HG had agreed to the Bill of Costs by not responding. However, after discussion, he realized that he was in breach of the Court Order. Once he had reviewed the matter with the Conduct Review Subcommittee, he agreed that he ought to have proceeded to have the Bills of Costs assessed.
14. It is clear to the Conduct Review Subcommittee that the member understands his obligation to abide by Court Orders. We believe it is very unlikely that a similar event will arise again and that, if it does, the member will respond in an appropriate manner.

**Recommendation:**

15. In all of the circumstances, the Conduct Review Subcommittee recommends that no further action be taken.

Dated at Vancouver, British Columbia, this 24<sup>th</sup> day of February, 2011.

  
Herman Van Ommen  
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Alan M. Ross