

**THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT**

**IN THE MATTER OF THE *Legal Profession Act*,
and in the matter of a Hearing regarding the conduct of
GARY HANSEN, a Member of the Law Society of Alberta**

INTRODUCTION

1. On March 14, 2013, a Hearing Committee of the Benchers convened at the Law Society of Alberta office in Calgary to inquire into the conduct of Gary Hansen (the “Member”). The Panel was comprised of Nancy Dilts QC, Bencher (Chair), Kathleen Ryan QC, Bencher, and Miriam Carey PhD, Lay Bencher. The Law Society of Alberta (“LSA”) was represented by Tamara Friesen. The Member was present and was represented by J. Patrick Peacock QC.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits J-1 to J-5 established the jurisdiction of the Hearing Committee. The Parties had no objections to the composition of the Panel.

3. The Hearing was held in public.

CITATIONS

4. The Member was responding to the following Citations, Citation 1 having been amended by consent of the parties during the course of the proceedings:

1. IT IS ALLEGED THAT you failed to serve your clients, and that such conduct is conduct deserving of sanction;

2. IT IS ALLEGED THAT you failed to keep your client informed as to the progress of your client’s matter, and that such conduct is conduct deserving of sanction; and

3. IT IS ALLEGED THAT you advertised that you were an expert in immigration law, and that such conduct is conduct deserving of sanction.

SUMMARY OF RESULT

5. At the Hearing, the following Agreed Statement of Facts (the “Agreed Facts”) was entered as Exhibit 1, with minor amendments as agreed by counsel:

Introduction

1. Gary Hansen was admitted to the Bar in 1975, and practices law in Calgary, Alberta at Hansen & Company.

2. Mr. Hansen’s primary area of practice is immigration law, but he also practises in other miscellaneous areas of law.

3. Mr. Hansen's current status is Active/Practicing.

Citation

4. On May 31, 2012, 2012 [sic], the Conduct Committee Panel referred the following conduct to hearing:
 1. IT IS ALLEGED THAT you failed to serve your clients, and that such conduct is conduct deserving of sanction.
 2. IT IS ALLEGED THAT you failed to keep your client informed as to the progress of your client's matter, and that such conduct is conduct deserving of sanction; and
 3. IT IS ALLEGED THAT you advertised that you were an expert in immigration law, and that such conduct is conduct deserving of sanction.

Facts

5. On December 14, 2006, Ms. P.W. and Ms. A.DLC, a citizen of the Philippines, hired Mr. Hansen to deal with an immigration matter concerning Ms. A.DLC.
6. In early 2008, Ms. W again consulted Mr. Hansen, this time on two legal matters involving Ms. E.DLC (Ms. A.DLC's sister).
7. After speaking with him in person, Ms. W hired Mr. Hansen to assist her in obtaining the labour market opinion, a prerequisite to the work permit necessary to bring Ms. E.DLC to Canada to work as her live-in caregiver (the immigration matter).
8. On behalf of Ms. E.DLC, Ms. W also hired Hansen & Co. to assist with a potential civil litigation claim Ms. E.DLC had against the Cs who had failed to honour a previous agreement to bring her to Canada as their live-in caregiver. Ms. E.DLC had allegedly suffered damages as a result of the Cs' actions (the small claims matter).
9. Mr. Hansen obtained Ms. E.DLC's consent to act as her representative with respect to the immigration matter. (EX 2) Neither he nor anyone else in his firm ever contacted her in order to obtain her consent to having Ms. W act as her agent with respect to the small claims matter. He and his employees treated Ms. W as though she was legally in a position to give instructions with respect to Ms. E.DLC's small claims matter although they had concerns about her authority to act on behalf of Ms. E.DLC.
10. Mr. Hansen successfully completed the immigration matter, assisting Ms. W and Ms. E.DLC in obtaining the labour market opinion and work permit required to bring Ms. E.DLC to Canada.
11. In May 2008, Mr. Hansen sent a demand letter to the Cs concerning Ms. E.DLC's claim for damages in the small claims matter (EX 3). In July 2008, the Cs lawyer replied to Mr. Hansen's demand letter, and denied any liability on the part of the Cs. (EX 4).

12. After receiving the reply letter from the Cs' lawyer, Mr. Hansen referred Ms. W to Rocky Yoo, then a junior associate in Mr. Hansen's office. Ms. W discussed the viability of the claim with Mr. Yoo and instructed him to commence a small claims action against the Cs on behalf of Ms. DC [sic].

13. Ms. W last heard from Mr. Yoo on November 4, 2008 when he advised that the legal fees to go to trial would be around \$2000, and she advised him to proceed with the action.

14. In late January or early February 2009, having heard nothing further from Mr. Yoo, Ms. W attempted to contact him to obtain an update. She was told by staff at Hansen & Co. that Mr. Yoo no longer worked at the firm.

15. On February 17, 2009, Ms. W sent Mr. Hansen a direct email asking him who was now handling the small claims matter (EX 5).

16. Mr. Hansen forwarded Ms. W's email to Ms. Wendy Byrne, the lawyer who had been assigned carriage of Mr. Yoo's files, on the 18th of February, 2009. He did nothing further to follow up on Ms. W's inquiry (EX 6).

17. Ms. W, having heard nothing from Mr. Hansen, Ms. Byrne, or anyone else at Hansen & Co., in response to her email, attempted to find out who was handling the file. She was told by the receptionist that Wendy Byrne was now handling Mr. Yoo's files.

18. In February 2009 Ms. W left two voicemail messages with a female associate, presumably Ms. Byrne, regarding the small claims file but received no response. Ms. W made no further attempts to contact Ms. Byrne.

19. Nine months later, in November of 2009, staff from Hansen & Co. sent Ms. W a draft Statement of Account (SOA) totaling \$10,000.00 for the legal work done on both the immigration and small claims files. Ms. W asked for further information about the SOA received an email indicating that she was to be billed \$3,300 for the immigration matter and \$5,600 for the small claims matter. (EX 7) Ms. W objected to the \$5,600 billed on the small claims matter.

20. On January 27, 2010 Ms. W received a revised copy of the SOA this time indicating that the \$5,600 had been reduced to \$4,400, and as a courtesy, further reduced by \$2,000 for a new total of \$2,100.00. The fees on the immigration matter, had now been raised from \$3,300 to \$5,688.60 (EX 8).

21. Ms. W replied that she was prepared to pay \$1,000 for the small claims matter and \$4,000 for the immigration matter plus disbursements. This offer was not accepted by Hansen & Co and Ms. W proceeded to have the account taxed.

22. Ms. W refused various offers by Hansen & Co to attend at the Hansen & Co offices to attempt a resolution of the dispute.

23. At some point between the rendering of the SOA and the taxation, Mr. Hansen asserted a solicitor's lien on Ms. W's file.

24. The limitation period for the small claims matter expired in January 2010.

25. The taxation proceeded on March 11, 2010, and the Taxing Officer reduced the fees on the immigration matter to \$4,000 and the fees on the small claims matter to \$700.00, and awarded the Complainant costs of \$150.00 (EX 9). Ms. W forwarded payment to Hansen & Co. accordingly on March 12, 2010.

26. Ms. W filed a complaint against Mr. Hansen with the Law Society on March 19, 2010 alleging that he had failed to follow through with the small claim, failed to respond to her inquiries, overbilled, and wrongly refused to pay for the cost of sending her file to her. (EX 10) She requested that Hansen & Co. bear the expense of sending the file to her, and that they pay the extra cost of Ms. DLC's airfare.

27. In a letter responding to Ms. W's complaint dated June 11, 2010, Mr. Hansen told the LSA the firm's time records indicated Ms. Byrne had done some work on the file but he could not explain why she did not respond to Ms. W's inquiry. Mr. Hansen suggested Ms. W should have followed-up with Ms. Byrne in person or by email or fax. He further stated that Ms. W refused to meet with him in person at his office to discuss her bill. (EX 11)

28. During the complaint process, Ms. Tina McKay advised Ms. W that Ms. W was responsible for the cost of transporting the file (EX 12).

29. In August of 2010, Ms. W made a claim to ALIA for damages for several related matters, including the missed limitation period for filing Ms. E.DLC's small claims matter. Ms. W's ALIA claim was initially denied on the basis that it was Ms. E.DLC who was the client and the one who had suffered damages (EX 12).

30. Eventually, ALIA negotiated a settlement and made a payment out.

31. Mr. Hansen now agrees that at all times during the events described above, he maintained ultimate responsibility for Ms. E.DLC's small claims matter, and had a solicitor-client relationship with Ms. E.DLC, and also, in her own right and by extension, with Ms. W (EX 13).

32. Mr. Hansen by virtue of his failure to properly supervise his employees, failed to serve his clients, Ms. E.DLC and Ms. W by:

- i) Failing to obtain Ms. E.DLC's consent to deal with Ms. W in relation to Ms. E.DLC's small claims matter;
- ii) Failing to communicate with Ms. E.DLC with respect to the small claims matter;
- iii) Failing to respond to Ms. W's inquiries about the small claims matter;
- iv) Missing the limitation period for filing a statement of claim with respect to the small claims matter; and
- v) Insisting on payment from Ms. W for work which [sic] not performed on the small claims matter, even after the limitation period had expired.

33. Mr. Hansen paid for an advertisement in the Yellow Pages which included the following: “Hansen & Co.: Your Immigration Solution Experts.” (EX 14)

34. In his letter of March 4, 2011, Mr. Hansen advised the LSA that he was “not that familiar” with the *Code* rule on advertising and undertook to delete the word “experts” from his future advertising, which he has now done (EX 12).

Admission of Facts and Guilt

35. Mr. Hansen admits as fact the statements contained within this “Agreed Statement of Facts” for the purposes of these proceedings.

36. Mr. Hansen agrees that the word “client” in Citation 1 should be amended to read “clients” as follows:

1. IT IS ALLEGED THAT you failed to serve your clients, and that such conduct is conduct deserving of sanction;

37. For the purposes of Section 60 of the Legal Profession Act, Mr. Hansen admits his guilt to Citation 1 as amended, and also admits his guilt to Citation 3. He further admits that the conduct in question with respect to both Citations amounts to conduct deserving of sanction.

6. No additional evidence was led by either party. It was agreed by counsel that Citation 2 was subsumed in Citation 1.

7. The Panel conferred and concluded that the Agreed Statement of Facts was acceptable to the Committee and amounted to an admission of guilt of conduct deserving of sanction in accordance with Section 60 of the *Legal Profession Act* with respect to Citations 1 and 3.

SUBMISSIONS REGARDING SANCTION

8. Both counsel for the LSA and counsel for the Member emphasized certain factors that the Hearing Panel should weigh in reaching its decision on sanction. Counsel for the LSA conceded that Mr. Hansen did not act with negative intention but submitted that the impact of his disregard of his professional responsibilities and duties to his clients had a material impact on his clients. She also reminded the Panel that Mr. Hansen’s disregard resulted in an ALIA claim which was ultimately settled.

9. Counsel for the LSA tendered Mr. Hansen’s discipline record. That record reflects five distinct complaints between 1982 and 2009, four of five of which attracted a reprimand, costs and a fine, the most recent of which attracted a fine of \$5,000. Mr. Hansen’s discipline record was entered into evidence as Exhibit 15, with a Hearing Report relating thereto and Practice Assessment being entered into evidence as Exhibits 16 and 17. Ms. Friesen submitted that given Mr. Hansen’s disciplinary record, a higher penalty was warranted, but did not recommend a suspension, particularly given Mr. Hansen’s admission as to guilt.

10. Mr. Peacock, QC, in his submissions on behalf of the Member, noted that Mr. Hansen accepts full responsibility as the leader of Hansen & Co. for failures arising out of his office. He emphasized Mr. Hansen’s lengthy career and the robust immigration practice he has developed. With respect to Citation 3, Mr. Peacock emphasized that Mr. Hansen immediately changed the

advertisement on learning of the breach of the rules. Weighing all of the factors, Mr. Peacock submitted that a reprimand is sufficient sanction.

DECISION REGARDING SANCTION

11. In determining an appropriate sanction following a finding of conduct deserving of sanction, the Hearing Committee is to take a purposeful approach to sanction. The overarching purpose of the sanction process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABLS 10.

12. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page 26-1):

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes. . . .

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of client's money, that lawyer's right to practise will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

13. The *Legal Profession Act*, Section 72(1) requires that a Hearing Committee, on finding a member guilty of conduct deserving of sanction, disbar, suspend or reprimand the member. Unlike disbarment or suspension, a reprimand does not limit a member's right to practice. It is, however, a public expression of the profession's denunciation of the lawyer's conduct and is to deter future misconduct by the member and within the profession: *Law Society of Alberta v. Westra*, 2011 CanLii 90716.

14. When deciding how the public interest should be protected through the sanction process, the Hearing Panel is invited to take into account various factors, including the nature and gravity of the misconduct, whether the misconduct was deliberate and whether the misconduct raises concerns about the lawyer's honesty or integrity. In addition, the Hearing Panel considers mitigating circumstances that may temper the sanctions that may be imposed including the lawyer's conduct since the misconduct, the lawyer's prior disciplinary record, the age and experience of the lawyer and whether the lawyer entered an admission of guilt, thereby showing an acceptance of responsibility: *Law Society of Alberta v. Elgert*, 2012 ABLS 9 (CanLII).

15. Considering the nature of Mr. Hansen's conduct in this matter, the Hearing Panel finds that he demonstrated a remarkable lack of diligence, attention and supervision, culminating in what might be fairly characterized as high handed billing. His actions and inactions caused unnecessary effort, frustration and inconvenience to his clients and persisted over a number of months despite his client's reasonable efforts to seek response. They also resulted in a missed

limitation period and ultimately in an ALIA claim. The impact of Mr. Hansen's conduct extended to his clients and to the profession as a whole.

16. Looking at Mr. Hansen's prior disciplinary record, the Hearing Panel agrees with counsel for the Law Society that a reprimand and a fine are warranted in the circumstances and that the fine should increase from those previously ordered. "A prior disciplinary record is typically an aggravating factor because it suggests that a lawyer has not sufficiently learned from past sanctions, which invites more severe sanctions to effect the necessary change in behavior. The focus of sanctions is to modify future conduct in such a way that the public is protected, rather than imposing punishment for its own sake." *Law Society of Alberta v. Elgert*, 2012 ABLS 9 (CanLII).

17. Having regard to the nature of the misconduct, the Hearing Panel ordered that Mr. Hansen be reprimanded, and that he be ordered to pay a fine of \$7,500. A reprimand was delivered by the Chair at the conclusion of the hearing and is set out below.

18. Counsel for the LSA tendered an Estimated Statement of Costs which was entered into evidence as Exhibit 18. The Hearing Panel ordered that Mr. Hansen pay the actual costs of the hearing.

19. Both the fine and the actual costs of the hearing are to be paid on or before September 30, 2013.

CONCLUDING MATTERS

20. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.

21. No referral to the Attorney General is directed.

22. There shall be no Notice to the Profession issued.

REPRIMAND

23. The *Hearing Guide* of the Law Society requires that this Hearing Committee take a purposeful approach to sanctioning a member who has been found guilty of conduct deserving of sanction. The fundamental purpose of the sanctioning process is the protection of the best interests of the public and the protection of the reputation and standing of the legal profession generally. As Chair of this Hearing Committee, I'm charged with the responsibility of issuing this reprimand to you.

24. As members of the Law Society of Alberta, our obligation is to discharge our professional duties with great diligence, recognizing that the public relies on us and places their trust in us, that we will act to protect and serve their interests.

25. We are obligated to serve our clients diligently and conscientiously with a selfless regard for the client's interest. In these matters, Mr. Hansen, you failed to do so. Your conduct in these matters was incompatible with the best interests of the public and has harmed the standing of the legal profession generally.

26. In these matters, you failed to obtain the instructions and concerns of the claimant client Ms. E.DLC on the litigation matter; you failed to diligently supervise young lawyers within your employ; you failed to discharge your responsibility to protect your client's litigation interests by filing a claim within the limitation period; and you issued a grossly inflated account not based on the quote that was provided by your associate of \$2,000 to proceed through to trial, but an account that was taxed down to a mere one-eighth of the original bill.

27. The kind of behaviour you displayed with respect to this matter brings great discredit to our profession.

28. This Panel finds without question that Ms. W was your client. The Agreed Statement of Facts and the amendment to Citation 1 recognizes that both Ms. W and Ms. E.DLC were your clients.

29. The panel is concerned that you prioritized your billing of your fees and a fee dispute over quality of work for your clients and diligent service of her interests and a productive solicitor-client relationship.

30. The public interest we serve demands more of you; your colleagues demand more of you; those who work under you require more of you; and those who place their trust, confidence, life and livelihood in you are entitled to the utmost of diligence. We encourage you, Mr. Hansen, to go forward from today demonstrating a greater degree of diligence than displayed in this instance.

Dated at Calgary, Alberta this 7th day of May, 2013.

Nancy Dilts, QC, Chair

Kathleen Ryan, QC

Miriam Carey, PhD