

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF GARY HANSEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Ryan Anderson – Chair and Bencher
Kenneth Warren, QC – Bencher
Edith Kloberdanz – Public Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Pat Peacock, QC – Counsel for Gary Hansen

Hearing Date

November 5, 2018

Hearing Location

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

HEARING COMMITTEE REPORT

Overview

1. Mr. Gary E. Hansen was retained by his client to provide legal services to obtain a post-graduation work permit (“PGWP”).
2. Between December 2015 and May 2016, the client provided Mr. Hansen with the documentation required to submit the application for the PGWP to Immigration, Refugees and Citizenship Canada (“IRCC”). The application was by Mr. Hansen’s staff submitted in paper form.
3. As part of the PGWP application, there is a requirement that the applicant have a valid passport at the time of granting the PGWP. Between the date of submission of the application and the date of its consideration by IRCC, the client’s passport had expired and so the PGWP was rejected by IRCC. Due to this passport error, the client was unable to work until the client’s application for a PGWP was granted in February 2017.
4. Mr. Hansen admits that he and his staff missed the impending passport expiry (about two months later) when the application was submitted.

5. IRCC permits applicants for a PGWP to apply online or by paper. Mr. Hansen's staff member chose to apply by paper. Mr. Hansen's staff member was not aware that the application for the PGWP could be filed online. At the time of submitting the application for the PGWP, the times posted by IRCC for the applications to be processed were approximately 33 days for online and 97 days for paper. IRCC indicates these are only approximate times and are not guaranteed.
6. On November 5, 2018, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Hansen, based on three citations:
 - 1) It is alleged Gary E. Hansen failed to provide legal services to his client to the standard of a competent lawyer and that such conduct is deserving of sanction;
 - 2) It is alleged Gary E. Hansen failed to keep his client informed and that such conduct is deserving of sanction; and
 - 3) It is alleged that Gary E. Hansen failed to properly supervise his staff and that such conduct is deserving of sanction.
7. After reviewing all the evidence, reviewing the exhibits, hearing the testimony of Mr. Hansen, and considering the arguments of the LSA and Mr. Hansen, for the reasons set out below, the Committee unanimously dismisses all citations. The decision was provided orally at the hearing, with written reasons to follow. This report contains those reasons.

Preliminary Matters

8. There were no objections to the constitution of the Committee or its jurisdiction. A private hearing was not requested so a public hearing proceeded on this matter.
9. In addition to the standard jurisdictional exhibits (Exhibits 1-5), counsel for the LSA and Mr. Hansen also entered:
 - 1) Exhibit 6 - Statement of Admitted Facts with Tabs A-V (the Statement); and
 - 2) Exhibit 7(a)-(d) - Various Correspondence and Statements from the Law Society.

Evidence

10. For evidentiary purposes, the Committee relied upon the Statement, the Exhibits, and the testimony of Mr. Hansen. A redacted copy of the Statement is attached to this decision for reference. Relevant portions of the Statement and other evidence are summarized below.
11. Between December 2015 and May 2016, the client provided Mr. Hansen with the documentation required to submit an application for the PGWP to IRCC. The application was submitted in paper form on June 13, 2016 by Mr. Hansen's staff.

12. As part of the PGWP application, there is a requirement that the applicant have a valid passport at the time of granting the PGWP. The client's passport expired August 12, 2016. The PGWP was rejected by IRCC on September 15, 2016. The client was unable to work until the client's application for a PGWP was granted in February 2017.
13. Mr. Hansen admitted that he was aware that his client required a valid passport for the application of the PGWP. He also admitted that the matter of the passport being valid was missed by Mr. Hansen and his staff and was the reason the PGWP application was rejected. Mr. Hansen expressed remorse and embarrassment as a result of that omission. Mr. Hansen had been practicing immigration law since 1989 and he testified this omission had never happened before. Mr. Hansen estimated that he was involved annually with about 200 applications in which a passport expiry date was in issue. He did not recall previously missing a date.
14. The PGWP application could have been submitted online or by a paper process. The website for IRCC indicates that the online application would have been completed in approximately 33 days and the paper application would have taken 97 days. These dates are estimates by IRCC and have no guarantees.
15. Mr. Hansen admitted that his staff working on this file was unaware that the application could be submitted by the online version. Mr. Hansen indicated there are advantages and disadvantages to both online and paper processes and that his normal practice is to submit the applications by paper.
16. The client advised that he was not properly informed by Mr. Hansen. There was communication to the client by Mr. Hansen and his staff early in the process and once the application was submitted, there was communication throughout the months of June, July, and August.
17. Time entries at Exhibit 6(U) and the correspondence of Mr. Hansen to the LSA at Exhibit 7(d) of the Statement show meetings, telephone calls and emails of communication between the client and Mr. Hansen or Mr. Hansen's staff. Exhibit 6(P) and Exhibit 6(Q) show email communication on July 19, 2016 between the client and Mr. Hansen's staff providing an update and explanation of the status of the application. The communication shows some frustration from the client, but there was communication from Mr. Hansen or his staff.
18. The client indicated at Exhibit 7(a) that he had requested meetings with Mr. Hansen. Mr. Hansen stated at Exhibit 7(d) and in his testimony that he and his staff had no knowledge of the request for the meetings.
19. The time entries at Exhibit 6(U) show meetings between Mr. Hansen and his staff. Mr. Hansen also testified that he had meetings and conversations with his staff on this file.

Arguments

20. Counsel for the LSA argued the following:
- 1) the missing of the passport expiry was more than just a mistake or negligence but was of conduct worthy deserving sanction;
 - 2) the client was not properly informed or properly communicated with; and
 - 3) there was not proper supervision of Mr. Hansen's immigration staff, which resulted in the application for the PGPW being refused.
21. Counsel for the LSA relied on the provisions of the Code of Conduct 3.2-1 and 6.1-1:
- 3.2-1 A lawyer has a duty to provide courteous, thorough, and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil; and
- 6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.
22. Counsel for Mr. Hansen argued the following:
- 1) the admitted missing of the passport's expiry date involved no moral turpitude and was not a matter deserving of sanction, but one that should be dealt with by way of a civil claim if the client chose to bring such a claim;
 - 2) there was communication between Mr. Hansen, his staff, and the client as outlined in the Exhibits and testimony of Mr. Hansen; and
 - 3) the staff were reasonably supervised by Mr. Hansen.
23. Counsel for Mr. Hansen also argued that even if there were problems with the submission of the PGWP application, communication to the client, or supervision of the Mr. Hansen's staff, they did not amount to conduct deserving sanction. The actions of Mr. Hansen were not harmful to the public or the profession but were rather a practice error affecting this client.

Analysis and Decision

24. The *Legal Profession Act* sets out the general definition of conduct deserving of sanction in section 49(1):

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

- (a) is incompatible with the best interests of the public or of the members of the Society, or
- (b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

25. In *Pearlman v. The Manitoba Law Society Judicial Committee*, (1991) 84 D.L.R. (4th) 105, Iacobucci J., speaking for the Supreme Court of Canada, said:

As for the jurisdiction of the Benchers to hear the disciplinary proceedings, I note that courts have recognized that Benchers are in the best position to determine issues of misconduct and incompetence. For example, in *Re Law Society of Manitoba and Savino*, (1983), 1 D.L.R. (4th) 285 (Man. C.A.) the Court of Appeal said (at pp. 292-93): “No one is better qualified to say what constitutes professional misconduct than a group of practicing barristers who are themselves subject to the rules established by their governing body.”

26. The burden of proof rests with the LSA to prove, on a balance of probabilities, the conduct occurred and that the conduct is deserving of sanction.
27. In determining whether the actions of Mr. Hansen are deserving of sanction, the standard is not one of perfection. In this matter, there were admitted actions and omissions by Mr. Hansen and his staff that demonstrate that the file was not handled perfectly.
28. While this file could have been managed differently and without error, the decision to be made by the Committee is whether the conduct of Mr. Hansen amounts to conduct deserving sanction.

Citation 1: Failure to provide legal services to his client to the standard of a competent lawyer.

29. While it would be convenient to have a clear test for when practice errors constitute conduct deserving of sanction, that is not possible. The practice of law has many facets and the Committee must determine if the conduct of Mr. Hansen in this particular case is deserving of sanction.
30. Mr. Hansen admits that oversight of the expiry date for the passport was clearly a mistake by him and his staff. However, this mistake does not appear to be the result of incompetence and is not one that affects the general public or the standing of the legal profession.
31. The Committee decided that this mistake does not cross the line into sanctionable conduct. Lawyers are not held to a standard of perfection. While Mr. Hansen admitted his error on the client’s file, that does not in these circumstances make his error worthy of sanction even if the mistake had unfortunate consequences for his client. Competent, conscientious, diligent, efficient and civil lawyers can make mistakes, and this is an example of such a situation.

32. This Committee agrees with Mr. Hansen's legal counsel that Mr. Hansen's conduct is not deserving of sanction.

Citation 2: Failure to keep his client informed.

33. In reviewing the Exhibits and other evidence, it is clear there was some frustration on behalf of the client in this matter. However, a review of the evidence also shows that there was communication between Mr. Hansen or his staff and the client.
34. While there is differing evidence on whether the client requested to meet in July 2016, the Committee finds that despite the conflicting evidence on that particular point, there is sufficient other evidence demonstrating that there was adequate communication between the client and Mr. Hansen or his staff about the status of the matter. While communications with the client could have been better, in the Committee's view, Mr. Hansen and his staff kept the client sufficiently informed throughout the process.
35. The Committee finds that the LSA has not proven that there was a failure to keep the client informed. Accordingly, this citation is dismissed.

Citation 3: Failure to properly supervise his staff.

36. As part of the PGWP application, Mr. Hansen and his staff made an error in oversight of the expiry date of the passport resulting in the application being refused by IRCC.
37. Mr. Hansen also admitted that his staff was not aware of being able to submit the application by the online process. Mr. Hansen indicated that it was his practice to normally submit these applications by paper.
38. It is clear from the evidence that there were meetings and discussions between Mr. Hansen and his staff on this file. While staff may not have known that the application could be filed online, in the Committee's view, this does not demonstrate a failure to supervise.
39. Further, as found above, the mistake in overlooking the expiry date of the passport is not, in the Committee's view, sanctionable conduct on the part of Mr. Hansen. As a result, staff also not catching the error on this single occasion is not sufficient evidence that Mr. Hansen failed to supervise his staff.
40. Based on the evidence, the Committee finds that the LSA has not proven Mr. Hansen did not fail to properly supervise his staff. Accordingly, this citation is dismissed.

Conclusion

41. Mr. Hansen and his staff could have managed this file better but on the record, this is an isolated instance. Mr. Hansen's mistake in oversight of the expiry date on the passport

does not amount to conduct deserving of sanction, and the LSA did not prove the second and third citations.

42. For the reasons set out above, the Committee finds that all citations against Mr. Hansen should be dismissed.

Concluding Matters

43. The exhibits and other hearing materials, transcripts, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, January 16, 2019.

Ryan Anderson, Chair and Bencher

Kenneth Warren, QC – Bencher

Edith Kloberdanz – Public Adjudicator

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING INTO THE
CONDUCT OF GARY E. HANSEN,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS

INTRODUCTION

1. I have been a member of the Law Society of Alberta (the “LSA”) since 1975.
2. There are 3 citations directed to a hearing by a Conduct Committee Panel as follows:

Citation 1: It is alleged that Gary E. Hansen failed to provide legal services to his client to the standard of a competent lawyer and that such conduct is deserving of sanction;

Citation 2: It is alleged that Gary E. Hansen failed to keep his client informed and that such conduct is deserving of sanction; and

Citation 3: It is alleged that Gary E. Hansen failed to properly supervise his staff and that such conduct is deserving of sanction.

The following is a summary of the conduct:

3. Mr. [N] consulted with me to submit an application (the “Application”) for a post-graduation work permit (“PGWP”). Mr. [N] is from [...] and was studying at [...] in Canada on a study permit. Between December 2015 and May 2016, Mr. [N] provided my office with documentation required to submit the Application. Included in the information was his passport, which had an expiry date of August 12, 2016. For some unknown reason, I failed to notice this, and this error led to all of the subsequent problems that occurred on this file. I failed to advise Mr. [N] that a new passport would be required before the Application could be submitted. Coincidentally, unknown to us, he had applied for a renewed passport which was received on the day our Application was filed (June 13, 2016).
4. The PGWP application was rejected by Immigration, Refugees and Citizenship Canada (“IRCC”) on September [...], 2016 due to the passport expiring on August 12, 2016. As a result, Mr. [N] was unable to work after [...], 2016 until a subsequent PGWP application and study permit application was submitted and granted on or about [...]

2017.

Regarding Citation 1: failed to provide legal services to his client to the standard of a competent lawyer

- 1.1 In December 2015, Mr. [N] consulted with me **[Exhibit A]** and retained me **[Exhibit B]** to file an Application for a PGWP. At that time, he was attending [...] on a study permit and would be graduating at the end of April 2016. He completed a skilled worker questionnaire in January 2016. **[Exhibit C]** Included in that questionnaire was the identification of his passport which had an expiry date of August 12, 2016.
- 1.2 IRCC allows applicants for non-immigrant visas a choice of applying online or by paper. I chose a paper Application. There are advantages and disadvantages to both. One cannot rely on the accuracy of the posted processing times because IRCC does not guarantee a particular processing time. The posted times (in June 2016, this was approximately 97 days for a paper application and 33 days for an online application **[Exhibit D]**) reflect the average processing time for 80% of the cases. The other 20% may be faster or slower, but in our experience is usually slower. Reliance on posted processing times has been litigated and IRCC won, meaning they are not liable for what they post.
- 1.3 A recent email circulated among the CBA Citizenship & Immigration members details some of the issues of using online applications as opposed to paper. **[Exhibit E]**
- 1.4 Problems can arise with the online software and the processing times are not guaranteed. The paper Application was submitted to Vegreville CPC. It is often easier to deal with them directly rather than submitting online. I did not specify which option to use because as long as the Application was complete, Mr. [N] could continue to work until a decision is made.
- 1.5 My assistant, [OK], was unaware initially that the Application could be submitted online.
- 1.6 I reviewed the file on June 9, 2016 **[Exhibit F]** and overlooked the passport expiry date. I should have noticed the expiry date. I had a duty to advise Mr. [N] that the Application should not be submitted until he had a new passport. The Application was couriered via [P] on June 13, 2016. I apologize that this error caused the Application to be rejected and for the resulting difficulties of Mr. [N]. We were not advised until September 16, 2016 by Mr. [N] that he had received a new passport on June 13, 2016.
- 1.7 On [...], 2016, IRCC refused the Application **[Exhibits G, H, I]** because the passport had expired on August 12, 2016. When I became aware that Mr. [N] was in

possession of a new passport, we prepared a restoration application to restore Mr. [N]'s student status and issue the PGWP. He had been working part-time while going to school and had been offered a new job in June 2016, which he was unable to continue after [...], 2016 due to losing his status. His student status would have expired in any case upon the earlier of the granting of the PGWP or the expiry of his study permit on July 15, 2016.

- 1.8 We researched the matter including posting our case on the CBA immigration listserve which is viewed by all CBA member immigration lawyers. We prepared a restoration of status as a student and a PGWP application. On September 9, 2016 we applied to Edmonton IRCC to expedite the restoration application. The IRCC office in Edmonton refused to expedite our application. **[Exhibit J]** We communicated with Mr. [N] on how to file a restoration application, **[Exhibits K, L]** and he completed the same, **[Exhibit M]** but was unsuccessful.
- 1.9 On or about late September or early October, Mr. [N] advised Mr. [K], an assistant in my office, that he had hired an immigration consultant to instead assist him. Mr. [K] gave him his file and the restoration application.

Regarding Citation 2: Failed to keep his client informed

- 2.1 Mr. [N] stated that he was not informed that his Application had been filed by paper until on or about July 19, 2016. Mr. [K] posted that he advised Mr. [N] on June 16, 2018 *[sic – 2016]* that his Application had been filed as shown by Mr. [K]'s time entry for June 16, 2018 *[sic – 2016]*. The only evidence of this is an email dated June 13, 2016 which states “we sent you *[sic]* application already” and asked for employer information. **[Exhibit N]**
- 2.2 On June 13, 2016 we prepared and sent a letter to Mr. [N]'s employer stating that Mr. [N] was allowed to work as he was in implied status during the processing of his PGWP Application. **[Exhibit O]**
- 2.3 Mr. [N] indicated that on three occasions he had requested a meeting with me and that none were made available to him.
- 2.4 In my response to this complaint, I have stated that neither I nor my receptionist had any knowledge or recollection of Mr. [N] requesting a meeting with me nor are they reflected in my time records.
- 2.5 Mr. [N] first voiced his concerns regarding the Application to me on July 19, 2016 about Mr. [K] making the Application by paper and not online. **[Exhibit P]** I asked Mr. [K] to respond and apologise to Mr. [N]. His response included that he was unaware of the ability to make the Application online. **[Exhibit Q]** In hindsight,

I should have responded to Mr. [N]'s communication directly. I did however speak with Mr. [N] on July 21, 2016 concerning Mr. [K], in response to a further email on the same date. **[Exhibits R, S]**

- 2.6 Also in this time frame the shipping of the Application by paper was confirmed. **[Exhibit T]**
- 2.7 Mr. [K]'s time records in August and September 2016 **[Exhibit U]** show that Mr. [K] and I contacted IRCC on several occasions to deal with various questions raised by Mr. [N] eg. August 2, 16, 23, 27 and September 7, 8, 9, 12. We also communicated with his new employer and provided an implied status letter. **[Exhibit V]**
- 2.8 It appears Mr. [N] was concerned about the fact that his Application was submitted by paper and not online as a result of which he felt that the delay contributed to his Application being rejected. In fact the delay did nothing to prejudice his application. Once it was submitted he was able to work until the Application was dealt with. The Application would have been rejected regardless due to Mr. [N]'s passport expiring in August 2018 *[sic - 2016]*.

Regarding Citation 3: failed to properly supervise his staff

- 3.1 The retainer letter of April 27, 2016 **[See Exhibit B]** states that the day to day handling of the file would be done by my staff under my supervision. This was initially [YZ] and subsequently [OK].
- 3.2 Mr. [K]'s time postings **[See Exhibit U]** indicate that he advised Mr. [N] on June 16, 2018 *[sic - 2016]* that his Application had been filed. Also, on June 13, 2018 *[sic - 2016]*, at the request of Mr. [N] and his employer, [C], we prepared a letter for Mr. [N]'s employer stating that Mr. [N] was allowed to work as he was in implied status during the processing of his PGWP Application.
- 3.3 The time records show there was constant interaction and in person discussion between Ms. [Z], Ms. [L], Mr. [K] and myself on the file.
- 3.4 I made two mistakes on this file for which I am truly sorry. The first mistake was that I failed to notice Mr. [N]'s passport's expiry date which would result in the rejection of his Application. Had I noticed this we would have told him to get a new passport before we applied. As it happened, he had the renewed passport on June 13, 2018 *[sic - 2016]*, which was the date we submitted the Application and we could have avoided all of this at that time. The second mistake I made was not dealing with Mr. [N] myself when he first raised concern about the online filing issue. In fact that had nothing to do with the rejection of his Application, but I should have dealt

directly with him on the concerns he had to try and allay his concerns.

ADMISSIONS

5. I admit to the facts above.

CONCLUSION

6. I acknowledge that all parties retain the right to adduce additional evidence and to make submissions on the effect of and weight to be given to these agreed facts.

ALL OF THESE FACTS ARE ADMITTED THIS 31 DAY OF OCTOBER, 2018.

GARY E. HANSEN