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 AND SUMMARY OF RESULT

1. On October 29, 2009 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of the Member, Gary Hansen. The Committee was comprised of James Glass, Chair, Fred Fenwick, Q.C. and Anthony Young. The LSA was represented by Lois MacLean. The Member was present throughout the hearing and was represented by Patrick Peacock, Q.C.

2. The Member faced three citations:

    1) IT IS ALLEGED that you acted in an unprofessional manner in dealing with your former employee, the complainant, by making inappropriate remarks, and that such conduct is conduct deserving of sanction.

    2) IT IS ALLEGED that you failed to provide your former employee, the complainant, with a Record of Employment and T4 on a timely basis, and that such conduct is conduct deserving of sanction.

    3) IT IS ALLEGED that you employed individuals who were not eligible for employment in breach of the *Immigration and Refugee Protection Act*, and that such conduct is conduct deserving of sanction.

3. In the course of the hearing the Hearing Committee, with the consent of counsel for the LSA and Mr. Hansen, amended Citation 2 to read as follows:

    2) IT IS ALLEGED that you failed to provide your former employee, the complainant, with a final pay cheque and a T4 on a timely basis, and that such conduct is conduct deserving of sanction.

4. At the commencement of the hearing, counsel for Mr. Hansen and the LSA presented the Hearing Committee with an Agreed Statement of Facts and Admission of Conduct Deserving of Sanction on citations 2 (as amended) and 3.

5. On the basis of the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction on citations 2 (as amended) and 3, the other evidence received at the hearing

and for the reasons that follow, the Hearing Committee finds that citations 2 (as amended) and 3 are proven and the member is guilty of conduct deserving of sanction. The Hearing Committee finds that citation 1 is not proven and is accordingly dismissed.

6. The Hearing Committee concluded that the sanctions on both citations should be a reprimand, fines and that the Member pay the costs of the hearing.

JURISDICTION AND PRELIMINARY MATTERS

7. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.

8. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.

9. The entire hearing was conducted in public.

CITATION

10. The Member faced three citations:

    1) IT IS ALLEGED that you acted in an unprofessional manner in dealing with your former employee, the complainant, by making inappropriate remarks, and that such conduct is conduct deserving of sanction.

    2) IT IS ALLEGED that you failed to provide your former employee, the complainant, with a final pay cheque and a T4 on a timely basis, and that such conduct is conduct deserving of sanction.

    3) IT IS ALLEGED that you employed individuals who were not eligible for employment in breach of the *Immigration and Refugee Protection Act*, and that such conduct is conduct deserving of sanction.

EVIDENCE

11. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent.

12. Exhibits 6-14, all relevant to the citations were entered into evidence by consent.

13. The Member provided an Agreed Statement of Facts and Admission of Consent Deserving of Sanction that was signed by him on the same date of the hearing. The Hearing Committee reviewed the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction on citations 2 and 3 and found it to be in a form acceptable to the Hearing Committee. Accordingly, pursuant to s.60(4) of the *Legal Profession Act* the admission is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member deserving of sanction in relation to citations 2 and 3. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction was entered into evidence as Exhibit 15 by consent.

FACTS

14. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction is reproduced herein (redacted with respect to the names of individuals):

1. Mr. Hansen is a member of the Law Society of Alberta, having been admitted in 1975. Mr. Hansen was a member at all times relevant to these proceedings.

2. Mr. Hansen faces three citations, as follows:

    1. It is alleged that you acted in an unprofessional manner in dealing with your former employee, the complainant, by making inappropriate remarks, and that such conduct is conduct deserving of sanction.

    2. It is alleged that you failed to provide your former employee, the complainant, with a final pay cheque and a T4 on a timely basis, and that such conduct is conduct deserving of sanction.

    3. It is alleged that you employed individuals who were not eligible for employment in breach of the *Immigration and Refugee Protection Act*, and that such conduct is conduct deserving of sanction.

3. The citations arise from a complaint made by Ms. A.R., a lawyer who was employed by Mr. Hansen from October 30th to December 22nd, 2006. *(Exhibit 6)*

4. Ms. R. sent a letter of complaint to the Law Society in March 2007. *(Exhibit 6).*

Citation #1

5. Ms. R. met with Mr. Hansen on November 13, 2006, approximately two weeks after she started working with Hansen & Company.

6. In her letter of complaint, Ms. R. states that during that meeting, she advised Mr. Hansen that people in the office were unhappy, and that there was a strong negative feeling. She states in her complaint that Mr. Hansen's reply was as follows:

> …. At this meeting, Mr. Hansen brought up the fact that he knew that the female employees did not like to work Saturdays (we were all obliged to work every second Saturday), and that he knew that "we would rather be out shopping". He also mentioned to me that if he could, he would only hire males, but that this was near impossible in today's legal field. *(Exhibit 6)*

7. Ms. R.'s letter states that she believed that Mr. Hansen's comments displayed a sexist attitude.

8. Mr. Hansen's response to the complaint indicates that he was taken aback and offended by Ms. R.'s initial comments as she had only been employed in the office for approximately two weeks, and that his comments were made in that context. *(Exhibit 9, page 5)* He also noted that the majority of employees he hired were female.

9. J.R., another lawyer who worked for Mr. Hansen in 2007, was interviewed as part of the investigation of this complaint. She stated that Mr. Hansen made similar comments to her with respect to his preference for hiring male employees. *(Exhibit 9, page 5)*

10. Mr. Hansen was asked about his comments to Ms. R. and Ms. V. during his interview with the Law Society investigator, Mr. D.P. The transcript of Mr. Hansen's response is found at Exhibit 9, Tab 4, pages 3 through 8.

11. Mr. Hansen acknowledges making comments along the lines of what is alleged by the complainant and Ms. V., but takes the position that the comments do not constitute conduct deserving of sanction.

12. Counsel for the Law Society takes the position that the comments do constitute conduct deserving of sanction; submissions will be made on that point by both counsel at the Hearing.

Citation #2

13. Ms. R. resigned from her employment on December 22, 2006. *(Exhibit 6)* A final pay cheque was owed to her in the amount of 1,302.08. *(Exhibit 9, Tab 2, page 10)*

14. Prior to her departure, the office accountant (Mr. S.A.) and Ms. R. discussed the fact the Hansen & Company had paid Law Society and ALIA fees for Ms. R., and that the Mr. A. had calculated the portion of the fees that applied to the period

after her resignation. He was of the opinion that she should repay that amount to Hansen & Company. Ms. R. informed Mr. A. that she would not settle any issues of repayment prior to receiving her final pay cheque. (*Exhibit 9, page 17, para. 4)*

15. On Jan. 9, 2007, Mr. A., sent an e-mail to Ms. R. which stated in part:

> .... attached is a statement showing the prorated professional dues that Hansen & Company paid on your behalf to the Law Society of Alberta.
>
> As per my calculations that I showed you before you left, you owe Hansen & Company $2,435.90. We request you to please send us the cheque for this amount ASAP. *(Exhibit 9, Tab 25)*

16. Ms. R. is not clear whether or not she received this e-mail.

17. On February 16th, 2007, an employee of Mr. Hansen's office (J.L.) sent Ms. R. an e-mail which stated:

> Our record is showing a distribution of membership fee, enrolment fee, and insurance fund levy of $2,435.90 liable under your title. We also have a couple of letters from the Law Society of Alberta and your T4 at the office. If possible could you please pay up the outstanding balance as well as picking up your mails? Thank you. *(Exhibit 9, Tab 24)*

18. On March 5th, Mr. R.V., who was a lawyer with Hansen & Company, sent a letter to the complainant with respect to the Law Society dues and outstanding salary. The letter stated in part:

> ... As you have ceased working at Hansen and Company on December 22, 2006, you must assume responsibility for the portion of these fees after you left this office. Your share of the Law Society dues amounts to $2,435.90. To this amount, $1302.08 have (sic) been deducted being your outstanding salary, leaving $1,133.82 due by you to Hansen and Company.
>
> Please forward a cheque of $1,133.82 to this office by March 12, 2007. Failure by you to do so will prompt Hansen and Company to take legal action against you without further notice. *(Exhibit 9, Tab 9)*

19. In her letter of complaint, Ms. R. summarized her view of this behavior as follows:

> Mr. Hansen decided to withhold my last pay check, my T4 and my Record of Employment as a form of blackmail in order for me to pay him back law society fees. ..... *(Exhibit 6, page 3)*

20. Alberta Employment Standards require that on termination, an employee must be paid by no later than three consecutive days after the last day of work, and that any deductions other than those specified (i.e. income taxes, CPP, EI, etc) must be authorized in writing by the employee. *(Exhibit 9, Tab 34)*

21. There was no authorization in writing from Ms. R. for the proposed deductions.

22. Human Resources and Skills Development Canada also requires that a Record of Employment be issued within 5 days of termination, and that T4 slips be issued by the end of February. *(Exhibit 9, Tabs 28 and 29)*

23. Mr. Hansen advises that The ROE was issued, but two months late. A copy of it was provided to the Law Society investigator and is included at *Exhibit 9, Tab 26.* The T4 was prepared but was never mailed. Ms. R. says she did not receive either document.

24. On March 7, 2007, Ms. R. paid $1,133.82 to Hanson and Company. *(Exhibit 9, Tab 27)*

25. On December 4, 2007, Mr. Hansen was interviewed by an investigator appointed by the Law Society on this matter. Pages 6 through 21 of the interview transcript deal with the issue of the T4, ROE and pay cheque, including the following:

> The only direction I recall making was, yeah, I'm the one who said that we should send her an e-mail stating we had the T4, and ask her to come in and pick it up, and pay the fees. Anything else, like with the paycheque, would have been a discussion she had with Mr. A., you know, because he's the one who handled those, you know, matters, but he also is the one, of course, who provides information to the payroll company, you know, based on the employment records of the staff. So, if the last paycheque was withheld, he would have, he should have and probably would have only done it with her consent. (Exhibit 9, Tab 39, page 13)

26. Mr. Hansen's letter to the Law Society of February 22, 2008 on this point sets out his position in part as follows:

> .... Rather than mail Ms. R. her T-4, J.L. of our office sent an email dated February 16, 2007 advising her that the T-4 was ready for pickup at our office and reminding her of her outstanding obligation to pay her insurance and membership fees. On March 5,

> 2007 we emailed Ms. R. a detailed statement of her Law Society dues and her employment income.
>
> It was my understanding from our former accountant S.A. that Ms. R. had agreed to pay and would pay her insurance fees on December 22, 2007, when she left. According to Ms. R.'s interview she did not agree to pay at that time.
>
> In conclusion we were in technical breach of the Income Tax Act not withstanding that the information was available for Ms. R. to pick up on February 16, 2007. I made a mistake by not mailing the T-4 to Ms. R..
>
> I have no personal knowledge of why Ms. R. did not receive a ROE. ..... Her failure to receive an ROE was unrelated to the issue of payment of her insurance fees and Law Society fees. I do not recall ever being aware of this fact at the time. *(Exhibit 12, page 3)*

Citation #3

27. In her letter of complaint, Ms. R. stated that:

> .... Also, when I was employed, 2 of the workers were working "illegally". They did not have their work permits yet, and were waiting for Citizenship and Immigration Canada to approve them. While they were working at Hansen & Company "illegally", they were unpaid, making it seem that they were "volunteering" their time. However, they were there full time (or more than full time in the case of one worker). *(Exhibit 6)*

28. This allegation relates to two employees being J.Z. and S.F. Neither would agree to an interview by the Law Society investigator, and neither is still employed by Mr. Hansen.

29. The report of the investigator on this issue is set out on pages 7 and 8 of Exhibit 9.

30. The report indicates that the ROE for Ms. Z. indicates that her first day worked was October 28, 2006, which was when she received her work permit, but that she had been 'volunteering' for some 3 weeks prior to that. She was terminated on December 18, 2006, and received a cheque for $2,550 less deductions in January 2007 which was noted to be for 'paralegal consulting services'.

31. Mr. Hansen will testify that Hansen and Company applied for Ms. Z.'s work permit on October 4, 2006, and that it was approved on October 20, 2006 and

issued on October 28, 2006. The Law Society has no evidence of that, but does not object to Mr. Hansen's evidence on that point.

32. In his interview with the investigator, Mr. Hansen described the payment in January 2007 to Ms. Z. as follows:

> Mr. Hansen: Yeah, Well, it was meant to compensate her for everything that wasn't compensated for, you know, on the payroll.
>
> Mr. P.: So, in that period of time that she was working her voluntarily, as a volunteer as you described it?
>
> Mr. Hansen: It included that time.
>
> Mr. P.: Okay. Did it include something else as well, or was it in payment for that time, which I believe would have been during the period of October, 2006?
>
> Mr. Hansen: Yeah, mostly October, 2006. *(Exhibit 9, Tab 39, page 2 and 3)*

33. With respect to Ms. F., the employment records indicate that she commenced employment on January 11, 2006, which was also the date of issue of her work permit.

34. The interview with Mr. Hansen regarding S.F. included the following:

> Mr. P.: Okay. So, S.F. had come to work, spent some time as a volunteer awaiting a work permit to be issued, is that correct?
>
> Mr. Hansen: Yes.
>
> Mr. P.: So, when she came to work for you, what period of time did she work here in a volunteer capacity until her work permit was issued?
>
> Mr. Hansen Couldn't say, really. I mean, I don't know exactly. *(Exhibit 9, Tab 39, page 4)*

35. In July, 2006 Ms. F. was paid a bonus of $2,500.00, less deductions. The payment is confirmed in e-mails found at *Exhibit 9, Tabs 37 and 38*, which include a copy of the cheque to her.

36. In his letter to the Law Society on this point, Mr. Hansen admitted the payments, but said:

> Our position on this matter is that the activities at Hansen & Company of Ms. Z. and Ms. F. before they obtained work permits did not constitute work. No benefits or wages were paid during this time and it was made clear to them before they started that they were volunteers only. ..... *(Exhibit 12, page 4)*

37. Mr. Hansen went on to say that in hindsight they should not have entered into the arrangement with Ms. Z., and that they were not in the habit of flouting immigration rules as "we earn most of our income from practicing in this area and providing advice on how to comply with the rules". *(Exhibit 12, page 5)*

38. A copy of the decision referred to by Mr. Hansen (*Juneja v. Canada)* is attached as *Exhibit 14*.

39. The *Immigration and Refugee Protection Act* states that a foreign national may not work in Canada unless authorized to do so. Both the employer and the employee may be subject to prosecution. The relevant sections are found at *Tabs 7 and 8 of Exhibit 9.*

All of these facts are agreed to and admitted.

I agree that the facts as set out above constitute conduct deserving of sanction as to citations 2 and 3.

This agreement is dated this _____ day of October, 2009.

_____	_____
Witness	Gary E. Hansen

SUBMISSIONS AND EVIDENCE ON SANCTION

15. Counsel for the LSA indicated that, with the concurrence of counsel for the Member, the Member would give evidence that was relevant to citation 1 and to give evidence regarding relevant matters that were material to sanctioning.

16. The Member, having been duly sworn, testified with respect to certain aspects of the matters at issue. Specifically, he testified that:

    (a) he carried on a general practice with the largest area of practice being in the immigration area;

    (b) that in relation to citation 1:

        i) at the material time there were 2 other lawyers in the firm, both were female;

ii) the balance of his staff (between 10-12) were all female, except for the firm's accountant who was male;
iii) that for the first week of the complainant's employment he was not in the office;
iv) that the complainant initiated the meeting after his first week back to work (the end of the complainant's second full week of work);
v) that the complainant seemed upset and began crying at the outset of the meeting;
vi) that he made comments similar to those contained within the Agreed Statement of Facts;
vii) that the comments were not directed to the complainant directly;
viii) that there was no outward signs to the Member that she was offended by the comments;
ix) that between the date of the conversation and the date that the complainant terminated her employment, no further mention of the conversation was made by anyone at the firm;

(c) that in relation to citation 2:

i) the T4 and cheque should have been sent out to complainant;
ii) the T4 was prepared by an external payroll service;
iii) the Member thought the T4 has been mailed by the external payroll service or accountant;
iv) that it was not a deliberate withholding of the T4 and cheque. That what occurred was an oversight; and
v) that the T4 had still not been sent;

(d) that in relation to citation 3:

i) that the arrangements made by him in relation to Ms. Z. and Ms. F. put them at risk and was therefore wrong.

SUBMISSION ON CITATION 1:

17. Ms. MacLean submitted that it was clear from the complainant's letter that she was taken aback by the Member's comments and found them to be inappropriate or unfair.

18. The Member does not deny making the comments, or comments similar to those, alleged to have been made.

19. Ms. MacLean indicated that the LSA takes the position that these comments are a breach of the Code of Conduct in that there is a prohibition against Members discriminating on the basis of gender.

20. Ms. MacLean indicated that it is for the Hearing Committee to determine if the alleged comments in the context that they were made crossed the line between being stupid to being conduct deserving of sanction.

21. Mr. Peacock, Q.C. indicated that it was important to remember the context in which the comments were made. The Member was confronted by the complainant without notice, accused of being a jerk, that his employees were unhappy and that he was running a sweatshop.

22. Mr. Peacock, Q.C. indicated that the comments were merely a stated preference or expression of opinion. The facts clearly indicate that he does not run his firm in accordance with the stated preferences. Thus, the conduct in question may have been stupid but it certainly did not cross the line to be conduct deserving of sanction.

23. The Hearing Committee considered the evidence submitted in relation to citation 1, including the oral evidence of the Member and concluded that the conduct was not conduct deserving of sanction when considering the context and circumstances under which the comments were made. Accordingly, the citation was dismissed.

SUBMISSIONS AND EVIDENCE ON SANCTION FOR CITATIONS 2 AND 3

24. Ms. MacLean submitted that the guiding principles for sanctions was the protection of the public and that conduct that brought the profession into disrepute should be sanctioned.

25. Ms. MacLean indicated that in relation to citation 2 did not involve a concern over the protection of the public; however, not complying with clear legislation and the requirements thereunder certainly would bring the reputation of the profession into disrepute.

26. Ms. MacLean indicated that the public would not be impressed with the conduct and tactics of the Member in relation to citation 3. The conduct of the Member was skating close to the line of being an offence under the *Immigration Act*.

27. The member put the employees at significant risk and the consequences could have been devastating.

28. Ms. MacLean tendered the record of the Member, which was entered as Exhibit 16 by consent. The record reflected the following:

Oct 26/82:	Professional misdemeanor resulting in a reprimand, costs and fine of $500.00
May 3/85:	Professional misdemeanor resulting in a reprimand and costs.
Mar 2/89:	Professional misdemeanor resulting in a reprimand and costs.
Apr 29/93:	Professional misdemeanor resulting in a reprimand and costs.

29. Ms. MacLean submitted that the appropriate sanctions for these matters would be a reprimand, fine and the payment of costs. Ms. MacLean noted that the Member had been co-operative with the LSA and entered into an Agreed Statement of Facts and Admission of Guilt to citations 2 and 3.

30. Ms. MacLean submitted that, given the Member's record, fines in the higher range would be appropriate in this case. In addition, Ms. MacLean tendered an Estimated Statement of Costs and by consent the same was entered as Exhibit 17.

31. Ms. MacLean also informed the Hearing Committee that the Member had been referred to Practice Review and, unfortunately, the report was not yet available. She submitted that as part of the sanction that the Hearing Committee should impose a condition that the Member co-operate fully and comply with all directions made in the report.

32. Mr. Peacock, Q.C. indicated that the Member was co-operating fully with the Practice Review and would not be opposed to any conditions the Hearing Committee wanted to impose regarding compliance by the Member with their directions.

33. Mr. Peacock, Q.C. noted that the Member's record was quite old and that the Member had practiced the last 15 years without problem.

34. In relation to citation 2, Mr. Peacock, Q.C. noted that the Member admits to the mistake made and has undertaken to ensure that the T4 and Record of Employment are forwarded to the complainant.

35. In regards to citation 3, Mr. Peacock, Q.C. noted that, at the time of the offence, the "banking" of hours for employees in the position of Ms. Z. and Ms. F. was an acceptable practice. After the decision in Juneja v. Canada (Minister of Citizenship and Immigration) 2007F(30) it became clear to the Member that the practice was not acceptable. Although the potential of significant consequences to Ms. Z. and Ms. F. was present, Mr. Peacock, Q.C. noted that they were not subject to any prosecution, were not harmed and received pay for their work.

36. Mr. Peacock, Q.C. also submitted that the Hearing Committee be mindful that the Member has been under LSA scrutiny for the last two and one half years, has been working with Practice Review and fully co-operated with the LSA.

37. Mr. Peacock, Q.C. submitted that the appropriate sanction should be a reprimand and payment of costs in the range of $500.00 - $1,000.00.

DECISION AS TO SANCTION

38. The Hearing Committee had regard to the following matters that influenced their decisions as to sanction:

(a) Mitigating factors:
   i) the Member was co-operative during investigation;
   ii) the Member admitted his guilt;
   iii) the Member was co-operative at the hearing; and
   iv) the Member has been subject to the scrutiny of the LSA since March 2007.

(b) Aggravating factors:
   i) as a lawyer he knew it was improper to withhold the employee's cheque and T4;
   ii) the Member put Ms. Z. and Ms. F. at significant risk and was aware that he had done so;
   iii) the Member's record; and
   iv) that these factors do nothing to engender respect for the law or lawyers by the public.

39. Taking into account all of the foregoing factors and evidence, the Hearing Committee concluded that the sanction should be a reprimand, fines and that the Member should pay costs.

40. The Chair delivered the reprimand to the Member and specifically the importance that all the Members of the Law Society comply with the Code of Professional Conduct. By doing so not only do we protect the public interest, but we engender trust and respect for the law and our profession. Any breach of the Code is a serious matter.

Lawyers have the privilege of being a self-governing profession, and to maintain that privilege it is critical that we all, as lawyers, comply with the Code of Conduct to the very best of our ability. In relation to citation number 2, the panel refers the Member to Chapter 8 of the Code of Conduct, which states:

> "Except where a higher standard is imposed by this Code, a lawyer in conducting the business aspects of the practice of law must adhere to the highest business standards of the community."

In relation to citation number 3, the panel refers the Member to the Code of Conduct, Chapter 1, Rule 1, which states:

> "A lawyer must respect and uphold the law in personal conduct and in rendering advice and assistance to others."

41. The Hearing Committee also agrees that fines are appropriate for the Member's conduct. The Hearing Committee is mindful that the maximum fine could be $10,000.00 per citation. The Hearing Committee has determined that the appropriate fines in relation to these matters are as follows:

Citation 2:	$2,000.00
Citation 3:	$3,000.00

Total: $5,000.00

42. The Hearing Committee agrees that it is appropriate to make a condition that the member co-operate fully with the Practice Review and comply fully with all recommendations and directions made by Practice Review.

43. The Hearing Committee also directs the Member to pay the actual costs of this hearing.

44. The Hearing Committee notes that it has no issue with respect to the Member's governability.

45. The Member is given time to pay the costs and the fines of 30 days from receipt of the Notice as to the actual costs by the Member.

CONCLUDING MATTERS

46. No referral to the Attorney General is required in this matter.

47. No separate notice to the profession is required in respect of this matter.

48. The decision, the evidence and the Exhibits in this hearing are to be made available to the public with the names of the complainant, clients, third parties or other employees to be redacted.

Dated this 7th day of December, 2009.

James Glass, Bencher
Chair

Fred Fenwick, Q.C., Bencher

Anthony Young, Bencher