



IMM-2514-97SEP 09 1997

Between:

PARMJEET KAUR MINHAS,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION,

Respondent.

REASONS FOR ORDER AND ORDER

**JOHN A. HARGRAVE
PROTHONOTARY**

The Applicant, whose lawyers missed the filing time for his application record by 10 minutes, applies for a 10 day extension. And thereby hangs a short cautionary tale.

The application record was to have been filed by 16:00, the Federal Court Registry closing hour, on 17 July 1997. At 15:35 the Applicant's lawyers called a document serving and filing enterprise, to pick up the material, serve it on the Department of Justice and then file it in the Federal Court. This was certainly leaving it to the 11th hour and, as it turned out, beyond.

The document filing service organized a courier and had the documents in hand by 15:58. They served the Department of Justice at 16:10. They were too late to file the material in the Federal Court.

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At this point an application for late filing was in order: not a serious matter under the circumstances, for the motion would, perhaps with a touch of chastisement, surely be granted. But it is certainly a time, if there is counsel involved, for counsel to earn his or her pay, to stand up, shoulders broad.

Instead, we have the applicant's counsel's written submissions:

"Applicant's Submissions Regarding Motion to Extend Time

1. The Applicant's solicitor's process serving company erred by not following the Applicant's solicitor's instructions to file the Applicant's application record within the time limit despite having instructions to do so and indicating that they would do so to the Applicant's solicitor's office.
2. Neither the Applicant nor the Applicant's solicitor was responsible for this error.

To be fair, the secretary who swore the affidavit in support of this motion says the document filing service indicated they would be able to effect their task within the remaining 25 minutes and goes on to say that if the advice had been otherwise, the law firm would have done the job itself. Likely by dispatching the newest article student, Jehu, son of Nimshi, who driveth even more furiously than a Vancouver bicycle courier.

The document serving and filing organization, instructed at the last minute, has been needlessly maligned. It is careless of counsel to leave such an important filing until such a late hour: it is inexcusable when things go wrong, to then try to blame another. This is a special reason by which costs ought to be awarded under Rule 1618. While the Applicant, Mr. Minhas, may know none of what has transpired, the general rule is that you do not separate counsel's conduct from that of the client, for counsel is acting as agent for the client. This may seem harsh, but the client must bear the consequences: see for example *Jouzichin v. Minister of Citizenship and Immigration*, unreported 9 December 1994 reasons of Madame Justice Reed in proceeding IMM-1686-94 at page 2. Further, the Court may award costs to a non-party: see for example *Young v. Canada* (1988), 12 A.C.W.S. (3d) 404 (F.C.T.D). West Coast Title Search Ltd., shall have as a

partial reimbursement toward the expense of their involvement including producing affidavit material, costs paid forthwith by the Applicant in the amount of \$50.00.

All practising lawyers have, at one time or another, left some matter until the last minute. Some of us have missed critical dates and most in this category are, quite properly, frank about the problem: the result is often better. However, in this instance, notwithstanding that the Applicant's solicitors, without any explanation, left serving and filing of the Applicant's record until well past the 11th hour, the Applicant is granted an extension of time within which to file his record.

ORDER:

- 1) The Applicant may have until 25 August 1997 to file the Applicant's record;
- 2) The Applicant shall forthwith pay \$50.00 in costs to West Coast Title Search Ltd. and as a precondition to filing the Applicant's record, shall file evidence of that payment with the Court; and
- 3) Counsel for the Applicant shall forthwith advise counsel for the Respondent of the filing of the record. Time shall not begin to run against the Respondent until receipt of advice as to filing.

(Sgd.) "John A. Hargrave"

Prothonotary

Vancouver, British Columbia
August 12, 1997

NAMES OF COUNSEL AND SOLICITORS OF RECORD

STYLE OF CAUSE: PARMJEET KAUR MINHAS

- and -

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

COURT NO.: IMM-2514-97

**MOTION DEALT WITH IN WRITING WITHOUT
APPEARANCE OF COUNSEL.**

**REASONS FOR ORDER OF
MR. JOHN A. HARGRAVE, PROTHONOTARY
dated August 11, 1997**

WRITTEN SUBMISSIONS BY:

Mr. Ian Goldman for Applicant

Ms. Leigh A. Taylor for Respondent

SOLICITORS OF RECORD:

**Kang and Company for Applicant
Vancouver, BC**

**George Thomson for Respondent
Deputy Attorney General
of Canada**

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