

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hanstke v The Great-West Life Assurance
Company,*
2026 BCSC 1807

Date: 20260923
Docket: S100070
Registry: New Westminster

Between:

Martin Hanstke

Plaintiff

And

**The Great-West Life Assurance Company, and In French, La Great-West,
Compagnie D'assurancevie and Canwest Mediaworks Publications Inc.,
Publications Canwest Mediaworks Inc.**

Defendants

Before: The Honourable Justice E. Sigurdson

Reasons for Judgment

The Plaintiff, appearing in person:

M. Hanstke

Counsel for the Defendant, The Great-West
Life Assurance Company:

J. Lim

Place and Date of Hearing:

New Westminster, B.C.
September 11, 2026

Place and Date of Judgment:

New Westminster, B.C.
September 23, 2026

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[1] On July 14, 2006, Martin Hanstke filed a civil claim against The Great-West Life Assurance Company (“Great-West”) and his former employer Canwest Mediaworks Publications Inc. (“Canwest”) following the termination of Mr. Hanstke’s disability benefits on or about July 20, 2005. He primarily asserted breach of contract and breach of trust or fiduciary duty.

[2] Great-West applies for dismissal of the claim for want of prosecution under Rule 22-7(7) of the *Supreme Court Civil Rules*, BC Reg 168/2009 and pursuant to the legal test articulated in *Giacomini Consulting Canada Inc. v The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [*Giacomini*]. In the circumstances, I find that the central factor informing whether it is in the interest of justice to allow the case to proceed is that it would be nearly impossible to adjudicate the matter given the state of existing evidence. I therefore conclude that this is a clear case for dismissal.

[3] In *Giacomini* the BC Court of Appeal provided that the test for dismissal for want of prosecution is in three parts, as follows:

- a) Has the defendant established that the plaintiff’s delay in prosecuting the action is inordinate?
- b) Has the plaintiff established that the inordinate delay is excusable?
- c) Is it in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay? (*Giacomini* at paras 69-70; *Liu v Ma*, 2026 BCSC 390 at paras 15-16; *Domirti v Crescenzo*, 2024 BCSC 422 at para 31).

[4] In answering the question of whether to proceed despite the delay, the court will turn to several factors to consider the interests of justice as a “more nuanced balancing of the competing considerations of the interests of the defendants, and the justice system as a whole”. *Giacomini* at para 75. These factors include:

- a) The prejudice the defendant would suffer defending the case at trial;
- b) The length of the delay;

- c) The stage of the litigation;
- d) The impact of the delay on the defendant's professional, business or personal interests;
- e) The context in which delay occurred, and whether the plaintiff delayed in face of the defendant's pressure to proceed;
- f) The reasons given for the delay;
- g) The role of counsel in causing delay;
- h) The public interest in having cases of genuine public interest heard on their merits; and
- i) The merits of the action, and whether or not it is bound to fail.

[5] I deal with each of the three issues expressed in the *Giacomini* analysis.

Inordinate delay

[6] The facts of this case provide a chronology revealing that no or few substantive steps have been advanced in the claim in 20 years since its filing.

[7] The claim was commenced against Great-West and Canwest on July 14, 2006. Mr. Hanstke's allegations relate to benefits he says were terminated in July 2005. At the time Mr. Hanstke was represented by counsel.

[8] Great-West filed an Appearance on or about July 28, 2006.

[9] The plaintiff took no steps to advance the action until filing a notice of trial on December 5, 2013, setting a four-day trial to commence December 15, 2014. The plaintiff did not file a trial brief or trial certificate, and no trial management conference was set. The notice of trial was not served on the defendants and only Mr. Hanstke attended at the first day of trial, which did not proceed.

[10] The plaintiff took no further steps until February 20, 2025, when he filed a second notice of trial, setting the trial for 20 days commencing April 20, 2026. Accordingly, there were two very lengthy periods where absolutely nothing occurred: seven years, from July 2006-December 2013; and eleven years from December 2013-February 2025.

[11] Great-West filed a notice of application on September 19, 2024, asking that the action be dismissed for want of prosecution. The application was not heard until now and was adjourned several times prior to December 10, 2025, when it was set down to be heard in long chambers.

[12] The only other activities on the action occurred when the plaintiff delivered a first list of documents on October 23, 2025, and Great-West delivered a list of documents on January 23, 2026. Great-West set a case planning conference which was held on January 27, 2026. Following that conference, the plaintiff filed a notice of intention to act in person. Great-West filed a notice of trial pursuant to the case planning conference which reset the trial for 15 days commencing July 12, 2027. On February 24, 2026, the plaintiff delivered an amended list of documents indicating that he does not have possession or control of any of the previously listed documents.

[13] No examinations for discovery have been conducted in this action.

[14] Inordinate delay is delay that is “uncontrolled, immoderate, excessive and out of proportion to the matters in question.” (*Giacomini* at paras 38-39). It is not just a question of a threshold passage of time or a “temporal arithmetic” but instead a holistic consideration of the circumstances of the case. Even where a plaintiff takes a litigation “step” following passage of time, “one step taken does not effectively reset an arbitrary clock” (*Liu* at para 17).

[15] Mr. Hanstke does not disagree that the delay in the present case is inordinate. The claim was initiated more than 20 years ago and essentially no substantive step has been taken. I would not conclude that filing notices of trial has

the effect of resetting the clock in this case, considering the whole of the prosecution of the action (*Liu* at para 17).

[16] There is not a set number that would constitute inordinate delay. I was taken to authorities in which a six-year period (*Kyle v Zimmer*, 2024 BCSC 500) and a five-year period (*Ramirez Carabantes v Ivanhoe Cambridge Inc./Ivanhoe Cambridge I Inc.*, 2024 BCSC 520) were found to be inordinate. Here a delay of 20 years, during which time the action has not been meaningfully advanced, is clearly inordinate.

Inexcusable delay

[17] Having established that the delay is inordinate, the burden shifts to Mr. Hanstke to demonstrate inordinate delay is excusable: *Sisson v The Owners, Strata Plan KAS 53*, 2024 BCSC 1098 at para 21; *Ghag v Ghag*, 2024 BCSC 400 at para 20.

[18] Mr. Hanstke explains that over the last 20 years, he has experienced a wide range of hardship and traumatic circumstances, including addiction, homelessness, poverty, health issues, and personal losses of family members. Great-West acknowledges that, based on his response materials, Mr. Hanstke has experienced hardship and true obstacles. However, they argue the evidence does not support that Mr. Hanstke was unable to take any meaningful action in the litigation in 20 years. Indeed, Great-West submits that filing of the 2013 notice of trial indicates at least periods of time in which steps could have been taken in pursuit of the claim.

[19] While each of the events described in Mr. Hanstke's response are genuinely limiting, the evidence provided does not disclose that Mr. Hanstke could not take any steps in the course of 20 years on the litigation, and I conclude that the delay is inexcusable.

Interests of Justice

[20] Upon concluding that there has been inordinate delay, and that delay is inexcusable, the Court must consider whether it is nevertheless in the interests of

justice for the action to proceed. I here consider the above factors outlined in *Giacomini*.

Significant prejudice to the ability to pursue or respond to this action

[21] I appreciate *Giacomini* holds that the third stage of the analysis is not hyper-focused on the question of prejudice. However, in this case, and on these unique facts, prejudice to each party's ability to pursue or defend the litigation (and the court to adjudicate it) is severely limited. Prejudice arising from delay provides the strongest—though not the only—basis for granting Great-West's application. On this basis, I conclude it is not in the interests of justice to allow the claim to proceed.

[22] The claim was filed in 2006, at a time when Great-West had not become part of Canada Life. At that time, Mr. Hanstke's employer was Pacific Newspaper Group ("PNG"). Mr. Hantske was insured by PNG for short-term disability, long-term disability and life benefits under an employee benefit plan that was established and funded by PNG pursuant to a collective agreement.

[23] Great-West was party to an administrative services agreement ("ASO") with PNG, where Great-West would administer, adjust and process claims for benefits under employee plans that were not underwritten or funded by Great-West. Great-West administered the claims process and facilitated payments, but would use funds to pay benefits from the employer. Great-West was ultimately amalgamated with Canada Life, which is defending the action in Great-West's name.

[24] In 2005, PNG amalgamated with other companies to form Canwest. Great-West subsequently had an ASO with Canwest for administration of benefits.

[25] Mr. Hanstke applied for short term disability benefits under the plan in 2004. An employee of Great-West, Amanda Drage, was appointed case manager for the claim. She initially denied the claim, and that decision was later changed. Mr. Hantske's claim was accepted on November 22, 2004. Ms. Drage reported to Linda McConnell.

[26] Mr. Hanstke was under the medical care of Dr. Ivo Hudlicky at the time he submitted his claim to short-term disability benefits, and Ms. Drage communicated with Dr. Hudlicky. In March 2005, Dr. Hudlicky informed Great-West that he was no longer treating Mr. Hanstke. Mr. Hanstke then continued treatment with Dr. Johan Wouterlout. Dr. Wouterlout provided notes and a form about Mr. Hanstke's condition and his methadone treatment program between March 2005 and June 2005.

[27] Mr. Hanstke's benefits were terminated on PNG's direction with the last day payable July 22, 2005. PNG advised Great-West that this was due to Mr. Hanstke's refusal to comply with requirements imposed on him as a graduated return to work program.

[28] On August 5, 2005, PNG advised Great-West to close Mr. Hanstke's disability file, advising that the plaintiff had resigned from his employment with PNG.

[29] The central issue in a 20-year delay must be the erosion or disappearance of evidence. In this case, evidence has become difficult or impossible to access in a range of ways.

[30] First, most if not all relevant documents have been lost. The Plaintiff's list of documents was amended to indicate that he no longer has possession or control of any of the documents listed. Great-West attests that the agreement at the centre of the arrangement between Great-West and Canwest can no longer be found, and although they have a successor agreement, the one in place at the time of the relevant events is not available.

[31] The Plaintiff's claim relates to the termination of disability benefits. The claim will require contemporaneous medical evidence in order to be adjudicated on its merits. All that is apparently available are three pages of medical notes from Mr. Hanstke's treating physician, Dr. Wouterlout, at the material times. Dr. Wouterlout has since passed away, and the time period for retention of medical records required by the College of Physicians and Surgeons has expired. Ms. Drage who corresponded with Mr. Hanstke about the benefits is not employed by Canada

Life. Ms. Drage's supervisor, Ms. McConnell, retired in 2007 and is no longer an employee of Canada Life. The defendant has no knowledge of either Great-West employee's whereabouts or whether they are still living.

[32] The defendant Canwest no longer exists. It dissolved around 14 years ago and did not produce any documents in the litigation. No employment records related to Mr. Hanstke are available.

[33] Witnesses also have been lost or their whereabouts are unknown. Dr. Wouterlout has passed. The former Great-West employees who were involved in administering the decision made about Mr. Hanstke's benefits are no longer employees of Great-West or of Canada Life after amalgamation. Their whereabouts and status are unknown. Canwest being dissolved means that it would be difficult if not impossible for Great-West to identify any witnesses who could give evidence related to the conduct or knowledge of the employer at the time of the events.

[34] Physical evidence material to the decision to terminate benefits is no longer available, as the defendant could not seek a reasonably contemporaneous independent medical opinion. I also find that the memories of any witness that could be found can fairly be assumed to be negatively affected by the passage of time.

[35] I find that serious prejudice is established on the evidence, and the prejudice factor is determinative in this case.

Other factors in the evaluation of the interests of justice

[36] In respect of the other factors addressed in the application, I conclude summarily that these also weigh against allowing the claim to proceed.

[37] The length of delay in this case is extreme. The case authorities referred to do not include cases of such prolonged delay. The effect of a delay of this length without any progress to litigation is inevitable prejudice to both parties.

[38] The litigation is not even in its infancy. Pleadings are not closed and no significant discovery steps have been taken. A response to Great-West's position that it is not properly named as a defendant is yet to be provided.

[39] The nature of the claim may have an impact on Great-West's interests, in that the allegations include that the company had conducted itself in bad faith.

[40] The context and reasons for delay must be weighed. It is apparent that Mr. Hanstke's life circumstances have caused him significant limits and he has undergone genuine hardship. I do not diminish the fact that he has experienced real difficulties. However, the amount of delay and the non-responsiveness in the whole course of the 20 years indicates that in the balance, the action should not proceed.

[41] Mr. Hantske had counsel initially and for years after filing; a notice of intention to act in person was filed much more recently. At the outset of the litigation, counsel for Great-West communicated repeatedly to counsel for Mr. Hantske advising of their position that the claim was not properly framed against Great-West. Counsel for Mr. Hantske was responsive to counsel for Great-West but could not provide a substantive response because Mr. Hantske could not be found by his own counsel to obtain instructions. I would not conclude that his then counsel was responsible for causing any delay.

[42] In terms of the nature of the litigation, it is a discrete claim related to a decision to terminate disability benefits for an employee. It is a private dispute, and I do not view this as a case involving a genuine public interest.

[43] I must also conclude that the merits of the action are bound to fail for the following reasons:

- a) The claim was brought against Great-West. Great-West's evidence is that they administered the benefits program in question according to an ASO with the employer but did not fund or insure the benefits.

- b) Mr. Hanstke was not party to a contract with Great-West, so did not have a claim in contract against Great-West.
- c) The ultimate decision on provision of benefits was made by the employer. There does not appear, given Great-West's evidence of its role, to be a legal basis for Mr. Hanstke's claim against Great-West. Mr. Hanstke did not respond to Great-West's position expressed in writing on this point for years.
- d) The other defendant, Canwest, was dissolved in 2012, and has not produced a list of documents. It will be essentially impossible to pursue a claim against this entity which no longer exists, and on the basis of records that no longer exist.

[44] Accordingly, I find that there is no prospect of success for Mr. Hanstke's claim against either of these defendants.

Conclusion

[45] Mr. Hanstke has had two decades to proceed with the claim. I am sympathetic to the life circumstances that have made it difficult to do so for periods of time. But a plaintiff is obliged to advance an action they wish to pursue, and he did not do so despite counsel for the defendants responding swiftly to the claim and trying to pursue his response repeatedly over the course of years, to no avail.

[46] Unreasonable delay in the prosecution of an action undermines public confidence in the justice system, regardless of whether the delay results in serious prejudice to the defendant's ability to defend the litigation: *Giacomini*, para 56; *Walco Industries Ltd. v McDougall*, 2026 BCSC 1678 at para 61. Here the delay has been so lengthy that I view the matter as nearly impossible to adjudicate.

[47] Accordingly, I find that dismissing the claim is not contrary to the interests of justice. The application to dismiss the claim for want of prosecution pursuant to Rule 22-7(7) is granted.

[48] While Great-West would normally be entitled to their costs of this successful application, I find that given Mr. Hanstke's representations about his living circumstances and impecuniosity, there should be no award of costs in this case.

"E. Sigurdson J."