

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

VIBHU RAJ JHANJI

- and -

IN THE MATTER OF:

THE LAW SOCIETY OF MANITOBA

Hearing Dates: July 16, 2019, November 26, 27, 28 & 29, 2019 & December 9, 2019

Appearances: Vibhu Raj Jhanji, Self Represented
Rocky Kravetsky, Counsel for the Law Society of Manitoba

REASONS FOR DECISION

Vibhu Raj Jhanji was called to the Manitoba Bar on May 20, 2015. On December 18, 2018 the Complaints Investigation Committee of the Law Society of Manitoba issued a citation (the "Citation") that charges Mr. Jhanji with failing to perform legal services competently throughout his short legal career in Manitoba – from May 20, 2015 to December 18, 2018.

For the reasons that follow, this Panel has concluded that the charges against Mr. Jhanji have been proven. The evidence adduced at the hearing, and Mr. Jhanji's own conduct of his defence to the charges, leave no doubt that Mr. Jhanji is not competent to practise law in Manitoba.

The Facts

(a) Summary of Evidence at Hearing

The hearing into the charge against Mr. Jhanji commenced on July 16, 2019. It continued on November 26, 27, 28 and 29 and December 9, 2019.

The evidence at the hearing included 24 exhibits. An agreed book of documents comprising nearly 3000 pages of material, much of it culled from various files on which Mr. Jhanji had acted for 17 different clients, was marked as Exhibit 8.

The Panel also heard evidence from two lawyers, Len French and Eleanor Andres. At the request of the Law Society, Mr. French and Ms Andres had conducted a practice review of Mr. Jhanji. Their review is summarized in a practice review report dated September 10, 2018 (the

"Practice Review Report"), document 1.1 in Exhibit 8.

Finally, Mr. Jhanji testified on his own behalf.

(b) The Practice Review Report and the Practice Reviewers

By letter dated July 5, 2018 Susan Billinkoff, counsel for the Complaints Resolution Department of the Law Society, informed Mr. Jhanji that the Complaints Committee had decided at its meeting on July 4, 2018 that a practice review of Mr. Jhanji's practice be conducted pursuant to Rule 5-74(1)(j).

In due course, the Complaints Resolution Department appointed Len French and Eleanor Andres to serve as practice reviewers.

Mr. French is a Manitoba lawyer whose practice has always been focused in the area of litigation. He was called to the Bar in 1982. He articulated at the firm of Fillmore Riley, and eventually joined that firm as a partner. In 2001, he joined two other lawyers to form the firm of Gange Goodman French. He has been a sole practitioner since 2016.

Ms Andres is a Manitoba lawyer whose practice has been focused on commercial law, wills and estates. She was called to the Bar in 1988. She practised for seven years at the firm of Simkin Gallagher. Thereafter, she continued in private practice at Fillmore Riley. She left that firm to work in the City of Winnipeg's legal department, and left the City of Winnipeg to take a position with Civil Legal Services at the Province of Manitoba as a procurement specialist – in her words, "handling the business of the government." For the past several years, Ms Andres has practised as a sole practitioner from her home, where she acts for clients in the areas of municipal law, estate administration and wills.

Mr. French and Ms Andres were very qualified to perform the task assigned to them by the Law Society. Between them, they have deep and broad knowledge and experience in the practice of law as barristers and solicitors in Manitoba. In particular, they have both worked in private practice, as sole practitioners and in large law firms. This gave them special insight into the context in which Mr. Jhanji practises as a sole practitioner with a mixed practice involving both litigation and commercial matters.

The review conducted by Mr. French and Ms Andres, they testified, is accurately described in the Practice Review Report. On August 18, 2019 they spent seven hours with Mr. Jhanji at his office, located in a basement apartment in Winnipeg. They conducted a survey of his open and closed files, which revealed a total of 60 files. They categorized these files as "litigation," "criminal," "family," "real estate" and "estate." The majority of Mr. Jhanji's files were in the category of litigation. This reflects the fact that Mr. Jhanji considers himself to be primarily a litigator and advocate.

The review by Mr. French and Ms Andres included an assessment of Mr. Jhanji's office management systems, which they found to be "non-existent." They found Mr. Jhanji operating

without an accounting system, a comprehensive client list or a system for file opening. They found that Mr. Jhanji used a computer to draft, send and receive documents and correspondence, but none of that was saved, organized and stored in any systematic way.

Mr. French and Ms Andres considered whether Mr. Jhanji had any practice supports – colleagues at the Bar to whom Mr. Jhanji might turn for advice and assistance. Unfortunately, they found that Mr. Jhanji did not have any useful connections with other lawyers who might be in a position to provide such support.

Their review included close analysis of four files in particular. (In the interests of maintaining the privacy of the clients involved, these matters will be referred to by their initials). For our purposes, it is sufficient to provide a brief summary of their findings and conclusions with respect to only one of those files, *D.C. v. HI et al*, because it is representative of the quality of Mr. Jhanji's work generally. The other three files involved *JLD* (an estate matter, relevant documents for which are found at Tab 16 of Exhibit 8), *HD* (also an estate matter) and *PSR* (a litigation matter, relevant documents for which are found at Tab 9 of Exhibit 8).

D.C. v. HI et al was a closed litigation file. Relevant documents are contained at Tab 15 of the Agreed Book of Documents. Mr. French and Ms Andres found it to be "in disarray"; it was not in chronological order; there were things "clearly missing from the file." There were no bills on the file, but three bills were found on Mr. Jhanji's computer. The client had paid a total retainer of \$3,000. Each bill had "the briefest of descriptions as to the legal services provided," and nothing was "broken down as to time or date." The file contained no statement of trust monies had and received, although Mr. Jhanji's bills were paid by way of transfer from the retainer paid to him in trust. Mr. Jhanji ultimately charged his client the full \$3,000.

The claim advanced by Mr. Jhanji for his client, an insured landlord, was against the client's insurer and insurance broker. The client had suffered a loss due to a break-in. The client now alleged that he had not been fully indemnified by his insurer, and that his broker had left him under-insured. Mr. Jhanji ultimately filed two claims: one against the broker (a copy of that statement of claim, filed on January 11, 2016, is found at Exhibit 8, Tab 15.1), and a second against the broker and two insurers (a copy of that statement of claim, filed on September 12, 2016, is found at Exhibit 8, Tab 15.2). According to the reviewers, Mr. Jhanji's pleading was "long, rambling, and largely unintelligible." The action against the insurers had also been commenced outside the applicable two year limitation period. This was not Mr. Jhanji's fault, and might have been remedied by an application for leave to commence a time-barred action under Part II of *The Limitation of Actions Act*.

The matter proceeded before a case conference judge. The defendants, represented by experienced defence counsel, indicated that they intended to move to strike large portions of the claim, and for summary judgment on the basis of the expired limitation period.

Motions and briefs were filed. In the reviewer's words, much of Mr. Jhanji's work "simply made no sense." Moreover, Mr. Jhanji took no steps to bring an application under Part II of *The Limitation of Actions Act*, despite the fact that this issue had been flagged by the defendants.

The reviewers inferred from their review of the file that the defendants had come to the conclusion that it was “costing more to fight the claim than it was worth.” Settlement negotiations followed, and the defendants, through their counsel, ultimately offered to settle for \$50,000, the policy limits. A cheque in that amount made payable to Mr. Jhanji’s client was sent by defendants’ counsel to him in trust that within 10 days, Mr. Jhanji provide defendants’ counsel with an executed release and discontinuance. Forms of release and discontinuance were enclosed with the transmittal letter. Mr. Jhanji’s client did not accept the offer. In breach of the trust conditions imposed on him, Mr. Jhanji failed to return the cheque to counsel opposite within 10 days. And, when counsel opposite did finally persuade Mr. Jhanji to return the cheque to her, Mr. Jhanji improperly purported to impose a trust condition on her, to the effect that she hold the cheque in trust or, alternatively, cause the sum of \$50,000 to be paid into court.

The claim was ultimately settled on the basis of a \$50,000 payment to Mr. Jhanji’s client some months later. The reviewers found that although this was a good result for the client, the result was achieved despite, and not because of, the legal services that had been provided by Mr. Jhanji.

In their report, Mr. French and Ms Andres noted that Mr. Jhanji “genuinely cares about his clients.” Nevertheless, they found that Mr. Jhanji demonstrated “significant gaps in his knowledge of the applicable law”, took positions that were “nonsensical” and “plain wrong,” and drafted improper pleadings that were often, and justifiably, the target of motions to strike or expunge. They recommended that Mr. Jhanji be “required to practice under supervision from a practitioner” until he had shown significant improvement in all of the many areas identified in their report.

Mr. Jhanji cross-examined Mr. French and Ms Andres, but their evidence on cross-examination only served to reinforce the conclusions to which they had come about Mr. Jhanji’s competence.

(c) Mr. Jhanji’s Evidence

Mr. Jhanji is in his early fifties. He was born in India. His father and uncle were both lawyers there. He himself began working as a lawyer in India in 1991. He and his wife applied to immigrate to Canada in 2004. Sadly, his wife died before their immigration application was completed.

Mr. Jhanji and his son arrived in Winnipeg in 2012. Mr. Jhanji applied to the Law Society of Manitoba to be called to the Bar. He proceeded to take the courses that were prescribed for him, including CPLED courses. He was granted permission to abridge his articles to a period of six months. He articulated with a small firm in Winnipeg, for which he was not paid. He was called to the Bar on May 20, 2015.

The firm with whom Mr. Jhanji articulated did not offer to employ him after his call to the Bar. Mr. Jhanji worked briefly with another sole practitioner, and shared space in that lawyer’s office. By June 2017, however, he found himself working from his own apartment as a sole

practitioner.

Mr. Jhanji testified at length on his own behalf. Mr. French and Ms Andres noted in their Practice Review Report that Mr. Jhanji answered questions that they put to him in a “long, rambling, and disjointed manner.” His evidence at the hearing was delivered in the same manner.

Mr. Jhanji is firmly of the view that he is competent. He admitted, albeit grudgingly, that he could stand improvement in certain areas of his practice, but said that the Law Society ought to assist him by providing him with a mentor who could help him improve. He is very committed to his Indo-Canadian community, he said. His hope is to provide legal services to that community in particular. He considers himself to be a fierce and relentless advocate who often finds himself protecting and advancing the interests of vulnerable and disadvantaged clients. He is mindful that his facility in the English language is imperfect. As a result, he uses a software program, “Grammarly,” to assist him in his written work.

On cross-examination, Mr. Jhanji was asked what steps he had taken to improve his competency since concerns about his competency were first raised 18 months earlier. He was unable to identify anything in particular. Mr. Jhanji often expressed the view that the Law Society was unfairly and improperly motivated by some animus towards him. This was evidenced by, amongst other things, the decision of the Complaints Investigation Committee to issue an interim suspension against him instead of exercising its authority to appoint a supervisor, as Mr. French and Ms Andres had recommended in their Practice Review Report.

Mr. Jhanji admitted that five statements of claim drafted by him, all contained in Exhibit 8, had been the subject of motions to strike as disclosing no cause of action. He described this as examples of “bully litigation” intended by counsel opposite to intimidate him. He refused to concede any significant or substantial deficiency in any of his pleadings.

Mr. Jhanji admitted that he had referred in court documents to settlement discussions in connection with the matter contained at Tab 3 of Exhibit 8, in breach of settlement privilege. He explained that the breach was justified, however, to demonstrate the “bad faith” of the party opposite. He admitted that he referred to privileged settlement discussions in court in the matter contained at Tab 6 of Exhibit 8, but said this breach was justified in order to adduce evidence of the value of a certain asset, a taxi licence, that was relevant to the litigation.

Mr. Jhanji admitted that in the matter contained at Tab 15 of Exhibit 8, he embarked on a course of action that encouraged his client to persuade the complainant, his client’s spouse, to make certain representations to influence the outcome of a matter. This course of action involved indirect communications between his client and his client’s spouse. Such indirect communications were in apparent breach of his client’s bail conditions. What his client needed, it appears, was an amendment to those bail conditions. In response to a question from the Panel, Mr. Jhanji admitted that he did not know the process to seek an amendment to a bail condition.

Mr. Jhanji testified that he has invested \$50,000 toward his legal career in Canada. He also testified that he is quite prepared to resume practising under the strict supervision of another lawyer.

(d) Exhibit 8: The Agreed Book of Documents

As noted above, the parties tendered, by agreement, a book of documents that contained nearly 3000 pages of material, much of it culled from various files on which Mr. Jhanji had acted for 17 different clients. This agreed book of documents was marked as Exhibit 8, and the Panel has reviewed them carefully.

The Law Society cited the contents of Exhibit 8 as evidence of Mr. Jhanji's incompetence. Mr. Jhanji, by contrast, cited many of the documents in Exhibit 8 as examples of his competence.

The Law Society's Position

The Law Society's position is aptly summarized in the concluding paragraph of its brief:

44. The plain fact is that in virtually every matter Mr. Jhanji has handled there are illustrations of his incompetence. Whether intended or otherwise his work is the cause of difficulty to the courts, to opposing lawyers and to everyone whose paths cross his. No matter how much he wants to help them, he is a liability to the clients who place their trust in him, running up costs and failing to intelligibly articulate genuine issues that they may be entitled to raise. He is, at present, demonstrably incompetent.

Mr. Jhanji's Position

Mr. Jhanji argued forcefully and at length in support of his position that he is not incompetent. He argued that the evidence before the Panel demonstrated that he was a diligent and fearless advocate. He cautioned the Panel not to confuse his adversarial attitude to litigation with incivility or incompetence. His detailed pleadings and his impassioned oral advocacy reflect his tenacity. He has taken on hard and complicated cases, and this is reflected in the matters contained in Exhibit 8.

Mr. Jhanji also reminded the Panel that he had, on occasion, sought assistance from at least three Winnipeg lawyers. Furthermore, he has always been open to the Law Society placing him under the supervision of another lawyer. If someone could demonstrate to him that he was incompetent, he said, then he would withdraw. However, he pointed out, he has appeared in court numerous times and the presiding judge has never informed him that he is incompetent. He has always acted in good faith.

Analysis and Decision

The Legal Profession Act governs the practice of law in Manitoba. The purpose of the Law Society

is stated in s. 3(1): to “uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.” Section 3(2) provides that in pursuing its purpose the Society must establish, amongst other things, “standards for the ...competence of persons practising or seeking the right to practise law in Manitoba” and to “regulate the practice of law in Manitoba.”

In Manitoba, the Benchers have set out some attributes of a competent lawyer in the *Code of Professional Conduct*. To that end, the term “competent lawyer” is defined in Rule 3.1-1 as follows:

3.1-1 In this section, “competent lawyer” means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer’s engagement, including:

- (a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;
- (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;
- (c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:
 - i. legal research;
 - ii. analysis;
 - iii. application of the law to the relevant facts;
 - iv. writing and drafting;
 - v. negotiation;
 - vi. alternative dispute resolution;
 - vii. advocacy; and
 - viii. problem solving;
- (d) communicating at all relevant stages of a matter in a timely and effective manner;
- (e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;
- (f) applying intellectual capacity, judgment and deliberation to all functions;

- (g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;
- (h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;
- (i) managing one's practice effectively;
- (j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- (k) otherwise adapting to changing professional requirements, standards, techniques and practices.

The Panel finds that Mr. Jhanji does not conform to the definition of a "competent lawyer." This conclusion is overwhelmingly supported by the evidence of the practice reviewers, including the findings, opinions and conclusions contained in their Practice Review Report. It is also supported by the many examples of Mr. Jhanji's work that were tendered in evidence, and by Mr. Jhanji's own conduct of his defence in this matter.

In his brief, counsel for the Law Society enumerated several instances of Mr. Jhanji's incompetence, and the Panel accepts them as further support for the Law Society's position concerning his lack of competence. These included Mr. Jhanji's conduct of the proceedings before Madam Justice Mirwaldt as reflected in the documents at Tab 6 of Exhibit 8; his conduct of the proceedings before the Court of Appeal as reflected in the documents at Tab 3 of Exhibit 8; his conduct of the proceedings in Small Claims Court as reflected in the documents at Tab 8 of Exhibit 8; his conduct of the proceedings to obtain leave before the Supreme Court as reflected in the documents at Tab 3 of Exhibit 8; the quality of his pleadings as reflected in the documents at Tab 9 of Exhibit 8; his demonstrated inability to understand or comply with settlement privilege obligations as reflected in his conduct of the matters referenced in Tabs 3, 5 and 6 of Exhibit 8; his demonstrated inability to understand or comply with trust conditions as reflected in his conduct of the matter referenced in Tab 15 of Exhibit 8.

Finally, the Panel observed Mr. Jhanji defend himself in this proceeding. He was disorganized; he was distracted by irrelevancies; he often misinterpreted or misunderstood cases and legislation to which he referred us; he demonstrated that he did not understand the rules of evidence by regularly referring to matters that were not in evidence.

The Panel has carefully considered all of Mr. Jhanji's submissions, oral and written, including the written submissions that were filed after the completion of the hearing. But Mr. Jhanji was ultimately unable to provide the Panel with even one example of work that he had performed competently. There is no evidence of Mr. Jhanji's competence, and overwhelming evidence of his incompetence.

At its simplest, the practice of law involves giving advice and taking instructions. Clients rely on


lawyers to give advice and take instructions competently, because it affects their legal rights and obligations, sometimes irrevocably. Clients are placed at serious risk when advice is incompetently given by a lawyer, or when instructions are taken and incompetently executed by a lawyer. The Panel is left with no doubt that anyone retaining Mr. Jhanji would be at serious risk of harm from his incompetence.

The harmful effects of Mr. Jhanji's incompetence extend beyond those who might retain him as their lawyer. The evidence before the Panel reveals that his incompetence frustrated the orderly conduct of proceedings before the courts. Counsel opposite and their clients were likewise frustrated by Mr. Jhanji's incompetence in their efforts to advance their matters. Mr. Jhanji's incompetence is a spanner in the works of a legal system that, at its best, should operate fairly, efficiently and expeditiously in pursuit of a just result.


Although this Panel has found Mr. Jhanji to be incompetent to practise law, it would be an unfortunate and unintended consequence of this decision if it were used against Mr. Jhanji for any other purpose. He presented himself to this Panel as a sincere person of good character and with good intentions. His incompetence to practise law should not, in and of itself, disqualify him from any other occupation which he might pursue.

Finally, it is worth noting that there was no evidence before this Panel that Mr. Jhanji was ever competent to practise law in Manitoba. Indeed, the Citation implies that he was never competent, inasmuch as it alleges that from the date of his call to the Bar forward he practised incompetently. It is beyond the scope of this Panel's inquiry to identify how Mr. Jhanji was ever admitted to practise law in Manitoba. Such an inquiry, however, is well within the scope of the Law Society's mandate to regulate the profession in Manitoba. Simply put, if Mr. Jhanji was never competent, how did he gain admission to the profession in the first place? That is a question that the Law Society ought to consider.

DATED this 14th day of January, 2020.



 Ted Bock (Chair)



 Roberta Campbell



 Maureen Morrison