THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

VIBHU RAJ JHANJI

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: October 11, 2019

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

REASONS FOR DECISION

[1] On September 17, 2019 I conducted a pre-hearing conference to consider a number of procedural and substantive matters that required resolution, following a preliminary motion before a Discipline Panel of the Law Society of Manitoba into charges concerning Mr. Jhanji, heard July 16, 2019. In its reasons dated July 19, 2019, the Panel rejected Mr. Jhanji's application that counsel for the Law Society, Rocky Kravetsky, be disqualified from further acting in his matter on the basis of alleged bias and improper conduct.

[2] Among the issues before me on September 17th, was a motion by Mr. Jhanji for "the reconsideration July 16, 2019 decision, to appreciate both the omitted and fresh evidence in the reasons, for the unrepelled conflicted interest of general counsel (GC) Mr. Kravetsky".

[3] The decision of the Panel on July 19th succinctly stated, was that there was simply no evidence presented to demonstrate that Rocky Kravetsky, counsel for the Law Society, was disqualified from acting for the Law Society:

> "He is not in a conflict of interest; he has not demonstrated any bias; there is no legal reason on the facts before us to disqualify him."

Given the particular circumstances of the proceedings and the breadth and scope of the pre-hearing conference provisions of the Law Society Rules, I concluded that it was in the best interests of all parties that I should hear Mr. Jhanji's application, which took place on October 11, 2019.

[4] Key to the request for reconsideration is whether fresh evidence should be admitted.

[5] It is trite to say that reconsideration of a Judicial Decision or that of an Administrative Tribunal such as the Panel in this instance, is a rarity; the fact that a party is unhappy with an unfavourable result is not sufficient to warrant what amounts to a second hearing before the same Tribunal (see *Fritschij v. Bazan*, 2007 MBCA 11, at paras. 22 and 29). The law has long been settled that for a hearing to be re-opened or repeated, there is a stringent two-part test that needs to be met. Firstly, would the additional evidence offered have been of such significance to have likely changed the result? And, secondly, could the evidence have been proffered before the initial hearing by the exercise of reasonable diligence? (see *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* [2001] 2 S.C.R. 983, 2001 SCC 59, at paras. 20 and 65).

[6] In this respect, during extensive argument, Mr. Jhanji proffered two distinct examples of "new evidence".

[7] The first is an exchange of correspondence between Mr. Jhanji and Mr. Kravetsky concerning a without prejudice proposal by Mr. Kravetsky, with respect to the ultimate disposition of the proceedings. There can be little doubt that Mr. Jhanji was offended by the proposal contained in the correspondence, and remains so to this day; but this is hardly decisive; Mr. Jhanji as he was free to do, simply rejected the proposal and that is the end of it. It is hardly evidence of impropriety on the part of Mr. Kravetsky. Then there is the question of privilege, which in the circumstances here, in my opinion, clearly shields this exchange from legal scrutiny in any event.

[8] The second new issue, at least in part, is the request made on three different occasions by Mr. Jhanji that the entire Board of the Law Society of Manitoba take control of the proceedings and deal with the matter itself (I note parenthetically that two of the three communications that he wrote directly to the Board, pre-dated the hearing of July 16th and were before Panel). Mr. Jhanji is aggrieved that his proposal was not taken up by the Law Society Benchers, but the simple answer to his request is that the Benchers lack jurisdiction to become involved in a discipline matter, the exclusive jurisdiction for which rests under the Act with the Discipline Committee.

[9] Other arguments were presented in terms of the July 16th hearing itself, Mr. Jhanji is highly critical of the Panel for not "analyzing the evidence". There is no substance to this complaint: simply stated when the Panel concluded that there was "no evidence" to support

Mr. Jhanji's allegations, it is hardly necessary to conduct a witness-by-witness or issue-by-issue analysis of the totality of the evidence.

[10] Much reliance was also placed by Mr. Jhanji on the decision of the Supreme Court of Canada in *Workers' Compensation Appeal Tribunal (WCAT) v. Fraser Health Authority*, 2016 SCC 25 in support of his submission that the Panel here has - somehow or another – the jurisdiction in any event, to reconsider the result. The case does not provide support for Mr. Jhanji's contention; in a nutshell, specific legislation enabled the Tribunal in that instance to "reopen an appeal in order to cure a jurisdictional defect". No such provision exists here; furthermore, the issue in the British Columbia Court of Appeal turned on whether "the power to review included a determination of whether the original decision was patently unreasonable". For technical reasons, the Supreme Court in the end was not required to decide the question, and hence was not prepared to interfere with the decision of the majority of the British Columbia Court of Appeal, which had restricted the ambit of review to purely jurisdictional issues.

[11] Mr. Jhanji contends there has been throughout a history of procedural unfairness, lack of compassion and discrimination against a foreign trained lawyer, all resulting in his loss of opportunity to practice his profession in the jurisdiction of his choice; but whether these allegations have merit and their potential impact, is for the Panel to determine when considering the evidence relevant to the three charges of incompetence brought against him. I reiterate that the only issue before me is the question of whether Mr. Jhanji should be permitted to again litigate before the Panel his contention that Mr. Kravetsky be disqualified from representing the Law Society in these proceedings.

[12] To summarize, there is nothing in the extensive submissions and argument by Mr. Jhanji that support his request for reconsideration of the July 19th decision of the Panel. The application to introduce fresh evidence is without merit; there is simply no legal foundation that permits him to challenge before the Panel its earlier rejection of his insistence that Mr. Kravetsky be precluded from appearing as counsel for the Law Society.

[13] One other matter needs to be briefly addressed. Following submissions, I requested further information respecting the statutory provisions and rules of the Law Society dealing with the jurisdiction of the Discipline Committee. As well, I asked for any additional documentation surrounding Mr. Jhanji's three requests to the Benchers of the Law Society that they intervene in the discipline process. Both Mr. Jhanji and Mr. Kravetsky promptly responded.

[14] Mr. Jhanji, for his part, went well beyond my specific request, providing supplementary written argument entitled "Points in Issue" addressing *inter alia* "whether reconsideration is permissible", and later "Points in Reconsideration Motion Supported by Documentary Evidence". While strictly speaking I do not believe I was required to review this documentation, I did so in the interests of completeness.

[15] Included in the material was the case of *R v. Moscuzza*, 2001 CanLII 28069, 54 O.R. (3d) 459, a decision of the Ontario Superior Court of Justice. Presumably, reference is made to this decision because of the discussion by Gans J. concerning the unique role of Crown Counsel in criminal cases, and by inference to administrative tribunals such as the Discipline Committee here. In *Moscuzza*, special Crown Counsel took instructions from an in-house lawyer directly answerable to the Board in question, thus potentially "tainting" the

objectivity and even-handedness to be expected from the Crown. These are obviously not the facts here, quite the contrary. Interestingly, after making the above findings and criticizing the process, Justice Gans declined to grant the stay of proceedings requested, concluding that the circumstances of the case were "not egregious" and that it simply involved an infraction of a regulatory scheme. In my opinion, this decision is of no assistance.

[16] In the result, Mr. Jhanji's application for reconsideration of the Panel's July 19, 2019 decision, is dismissed.

DATED this 24th day of October, 2019.

R. J. Scott.

Mr. Richard J. Scott
Chairperson of the Discipline Committee