

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

VIBHU RAJ JHANJI

- and -

IN THE MATTER OF:

THE LAW SOCIETY OF MANITOBA

Hearing Date: July 16, 2019

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

REASONS FOR DECISION ON PRELIMINARY MOTION

On July 16, 2019 this Panel met to commence a hearing into certain charges of professional misconduct against Vibhu Raj Jhanji, a member of the Law Society of Manitoba. The charges are contained in a citation dated December 18, 2018 (the "Citation"), which was entered as Exhibit 1 in these proceedings.

Mr. Jhanji brought a preliminary motion, which was entered as Exhibit 2. By that motion he sought a variety of relief, including an order disqualifying Mr. Kravetsky from prosecuting the charges in the Citation; an order staying this hearing pending the outcome of a complaint made by him to the Manitoba Human Rights Commission against the Law Society of Manitoba; and an order directing the Complaints Investigation Committee (the "CIC") to reconsider the charges in the Citation and take different action.

Mr. Jhanji filed two affidavits in support of his motion, sworn February 27, 2019 and July 16, 2019. Mr. Kravetsky filed an affidavit in opposition to the motion, sworn by Anna Brown on May 17, 2019. Ms Brown is an administrative assistant employed by the Law Society. All three affidavits were entered as exhibits.

Mr. Jhanji also filed a brief of argument. Mr. Kravetsky responded with a brief on behalf of the Law Society, to which Mr. Jhanji filed a reply brief.

The evidence filed by the parties, together with the briefs, were provided to the Panel in advance of the hearing. (It should be noted that an unsworn copy of Mr. Jhanji's affidavit of July 16, 2019 was provided to the Panel in advance of the hearing, with a sworn copy provided on the day of the hearing.)

On July 16, 2019 Mr. Jhanji and Mr. Kravetsky presented oral argument, following which the Panel reserved its decision.

For the reasons that follow, the Panel has concluded that Mr. Jhanji's motion should be dismissed.

The Facts

For the purposes of this motion, the relevant facts can be reduced to the following.

In 2018, the Law Society received information that raised concerns about Mr. Jhanji's competence. Some of this information came by way of a letter from Chief Justice Chartier to the Law Society dated April 3, 2018. All of this information was referred to the CIC. An investigation and practice review followed. On October 31, 2018, the CIC authorized three charges of professional misconduct against Mr. Jhanji. In addition, the CIC summoned Mr. Jhanji to appear before it on December 12, 2018 to address concerns that it had with respect to his ability to practice competently pending the disposition of the charges.

Mr. Jhanji did appear before the CIC on December 12, 2018. He made submissions on his own behalf, and answered questions put to him by members of the CIC. The CIC adjourned to consider the matter and, after deliberations, reconvened and informed Mr. Jhanji that it had decided to suspend him from practising law pending the conclusion of the disciplinary proceedings that it had authorized.

Mr. Jhanji has been suspended since December 12, 2018. He appealed the CIC's interim suspension order as he was entitled to do under s. 75 of *The Legal Profession Act*. That appeal was heard by Mr. Justice Toews. On June 20, 2019, Mr. Justice Toews dismissed Mr. Jhanji's appeal. An appeal from that decision to the Manitoba Court of Appeal is pending.

In the meantime, Mr. Jhanji has made a complaint to the Manitoba Human Rights Commission against the Law Society of Manitoba alleging, amongst other things, "systemic bias".

Mr. Jhanji's Position

Mr. Jhanji argued that Mr. Kravetsky's attitude and approach to his prosecution of the charges in the Citation reflect some animus against him by Mr. Kravetsky. In his view, he has been unfairly singled out from the profession as a whole, and been made to submit to this disciplinary process without reasonable cause.

Mr. Jhanji also argued that the CIC had failed to properly perform its statutory duty by not exploring other means to address the concerns that had been raised about his competence. For instance, he was not offered someone who might supervise his practice. Rather, the CIC proceeded to suspend him – wrongly, he says.

Mr. Jhanji was critical of the steps taken by the CIC on the basis of the information provided to it. To that end, he pointed to the letter from Chief Justice Chartier. That letter, he argued, did not express any complaint about him by the Chief Justice. In his view, the letter had been misconstrued and misused by the CIC to advance charges of professional misconduct against him that were unwarranted.

Mr. Jhanji argued strenuously that he is a competent practitioner. He offered several examples of his legal work to support his contention, although many of those examples were not contained in the affidavit evidence on which he relied.

If this Panel concluded that Mr. Kravetsky ought to be disqualified from prosecuting the charges in the Citation, Mr. Jhanji told us, then the rest of the relief that he was seeking would “fall into place”. If this Panel did not disqualify Mr. Kravetsky from continuing to act in this matter, then this hearing should be stayed pending the outcome of his complaint to the Manitoba Human Rights Commission. The gist of that complaint is that the Law Society has failed in its duty to accommodate him by not providing him with access to a mentor or supervisor to oversee his practice.

The Law Society’s Position

The Law Society argues that Mr. Jhanji’s motion must fail for this simple reason: he has led no relevant evidence to support his motion. On the subject of Mr. Kravetsky’s disqualification, he has led no evidence of a conflict of interest, bias or any other legal ground. On the subject of a stay of proceedings, he has led no evidence that he faces a real risk of prejudice that outweighs the public’s interest in the timely disposition of the charges against him if the stay is not granted.

As regards Mr. Jhanji’s argument that the CIC had failed to properly perform its statutory duty, the Law Society pointed out that the CIC’s interim suspension order had been upheld by Mr. Justice Toews, so settling any question about the legality of the CIC’s handling of this matter.

The Law Society argued that this motion was not concerned with the merits of the charges against Mr. Jhanji. Whether or not the Law Society’s charges of incompetence against Mr. Jhanji will be proved on a balance of probabilities remains to be seen. But it is this Panel that has the jurisdiction to make that determination. This Panel also has the jurisdiction to consider and decide whether Mr. Jhanji’s complaints about the CIC and the Law Society as a whole are justified. Moreover, it is in the interests of all concerned – Mr. Jhanji, his clients, the profession and the public at large – that all of these matters be determined as soon as reasonably possible.

By contrast, the Manitoba Human Rights Commission does not have the jurisdiction to determine whether or not Mr. Jhanji is competent to practice law. And, while it does have jurisdiction to investigate Mr. Jhanji's human rights complaint, the evidence in Ms Brown's affidavit indicates that it will be many months before the Commission will be in a position to do so.

The Law Society argued that Mr. Jhanji's complaint that it had failed to accommodate him essentially amounted to a demand that it accommodate incompetence in its members. Such an accommodation is obviously not in the best interests of the public.

Analysis and Decision

Mr. Jhanji and the Law Society both provided books of authorities. A list of their respective authorities is appended to these reasons, and they have been considered by the Panel. As will be seen, however, specific reference to those authorities is not necessary for the purpose of these reasons for decision.

Mr. Jhanji's motion to disqualify Mr. Kravetsky from prosecuting the charges against him fails for the very reason identified by the Law Society in its argument: there is no evidence to support the conclusion that Mr. Kravetsky is in a position that disqualifies him from continuing to act 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. Not only does the evidence not support Mr. Jhanji's assertion, but it reveals that throughout these proceedings Mr. Kravetsky has cooperated with Mr. Jhanji, and treated Mr. Jhanji with patience and civility. On the basis of the evidence filed by Mr. Jhanji in particular, this Panel finds that he has no cause for complaint with respect to Mr. Kravetsky's conduct of these proceedings to date.

Mr. Jhanji's request for a stay of proceedings fails for the same reason – there is simply no evidence that in the absence of a stay of these proceedings pending the outcome of Mr. Jhanji's complaint to the Manitoba Human Rights Commission, that Mr. Jhanji will suffer any prejudice at all. Moreover, it is in Mr. Jhanji's interest that these charges be disposed of as soon as possible. Granting him a stay of proceedings would only work against his own interest.

The Panel also finds that there is no basis for Mr. Jhanji's complaint that the CIC failed to properly perform its duties during its investigation of him. The CIC received information that gave rise to concerns about Mr. Jhanji's competence. It investigated. It conducted a practice review. It exercised its discretion to refer charges to the Discipline Committee. It considered whether an interim suspension order might be in the public interest, and before making a decision on that point, it gave notice to Mr. Jhanji, invited him to make submissions on his own behalf, and heard those submissions. It ultimately ordered that Mr. Jhanji be suspended pending the outcome of these proceedings, and that order has been upheld by the Court of Queen's Bench. There is no evidence to support Mr. Jhanji's argument that the CIC has failed to treat him fairly, or that it is doing its work with some ulterior motive.

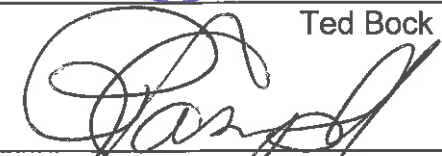
None of this should be taken to mean that the charges against Mr. Jhanji will be proven. This Panel has not made any findings on the merits of those charges. The allegations in the Citation will be the subject of this hearing when it resumes.

Accordingly, Mr. Jhanji's motion is dismissed. The hearing should be scheduled to resume as soon as reasonably practicable.

DATED this 19th day of July, 2019.



Ted Bock (Chair)



Roberta Campbell



Maureen Morrison

APPENDIX TO REASONS FOR DECISION ON PRELIMINARY MOTION

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

VIBHU RAJ JHANJI

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IN THE MATTER OF:

THE LEGAL PROFESSION ACT

BOOK OF AUTHORITIES OF THE LAW SOCIETY OF MANITOBA
MOTION HEARING: JULY 16, 2019

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IN THE MATTER OF: THE LAW SOCIETY OF MANITOBA

**VIBHU RAJ JHANJI
-and-**

IN THE MATTER OF: THE LEGAL PROFESSION ACT

**THE BOOK OF AUTHORITIES
(Member)
(Hearing date: July 16th, 2019)**

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