

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

VIBHU RAJ JHANJI

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing: May 20, 2020

Panel: Roberta Campbell (Chair)
Maureen Morrison (Public Representative)

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

Reasons for Decision - Consequences Hearing

On January 14, 2020, the panel rendered its decision that Vibhu Raj Jhanji (“the Member”) was not competent to practise law in Manitoba. On March 3, 2020 the Member filed a motion asking that the January 14, 2020 decision be set aside, that the matter be reconsidered and a hearing reopened, and that the matter be referred to a new panel as the existing one lacked jurisdiction. This motion was heard by the panel on April 8, 2020 and was dismissed. Subsequently, a hearing was held on May 20, 2020 to determine the consequences arising out of the January 14, 2020 decision.

In considering the matter, the panel heard submissions from the Law Society and the Member. In addition, the panel received and reviewed the following material:

- Brief of the Law Society of Manitoba Consequences Hearing
- Book of Authorities for Consequences Hearing
- S1 - Affidavit of Vibhu Jhanji, provided on May 11, 2020 and revised May 15, 2020

- S2 - Affidavit of Vibhu Jhanji, provided on May 19, 2020
- S3 - Document Book prepared by the Law Society of Manitoba
- S4 - copy of "References Not in Evidence", provided by Mr. Jhanji on May 19, 2020

The Member made further submissions via email on May 21, 2020, with attachments. It should be noted, that the materials submitted after the hearing concluded were not considered by the panel.

Position of the Parties

The Law Society takes the position, quite rightly, that an incompetent member should not be practising law. Indeed, the mandate of the Law Society of Manitoba is described in *The Legal Profession Act, C.C.S.M. c. L107, Section 3(1)*:

"3(1) The purpose of the Society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence."

In this regard, the Law Society argues that any disposition arising out of a finding of incompetence must protect the public while taking into account the Member's particular circumstances.

The Law Society asks that the following factors be considered:

- a) That the Member has not demonstrated any insight into his deficiencies;
- b) That there is no specific cause or explanation offered by the Member for these deficiencies and as a result, no suggestion as to what, if any, remedial conditions can be fashioned to address this situation;
- c) That while the Member's conduct may look like professional misconduct, it is likely an effect of his incompetence as opposed to bad faith behavior;
- d) That the unfounded allegations made by the Member regarding various institutions and individuals involved in his case, are to be considered reflections of his state of incompetence, rather than the state of his character;
- e) That the panel found the Member to be a sincere person of good character and good intentions;
- f) That the Member persistently engages and re-engages on the same topics and any disposition must recognize that this tendency will likely continue.

The Member's position is not as easily discerned, as it appears that the Member has not accepted the finding from the decision of January 14, 2020 and he continues to emphasize points already ruled upon. The vast majority of the material submitted by Mr. Jhanji before the hearing on May 20, 2020, and his argument in front of the panel focused on disproving the finding of incompetence, as opposed to him articulating his position regarding consequences. Mr. Jhanji took the position that the "legal test of the disposition hearing is not defined in the Society's brief and any automatic application of section 72 of *The Legal Professions Act* solely based on incompetence would be unjust." (S3, Tab H, consolidated Document Book, page 376, par 2). However, during oral argument, in spite of being asked several times by the Chair to direct his remarks to the issue of disposition, Mr. Jhanji continued to focus on matters previously adjudicated. Mr. Jhanji continued to put forward the position that the panel lacked jurisdiction and further, that it should not decide consequences until such time as his Manitoba Human Rights Code complaint of discrimination has been adjudicated. In his closing oral argument, Mr. Jhanji indicated that what he was seeking was for the panel to defer its ruling on disposition until such time as his appeal of the finding of incompetence has been finalized. Counsel for the Law Society pointed out that a member can appeal only when a decision on consequences has been made. Finally, Mr. Jhanji took the position that because the panel found he was a sincere person of good intentions, he should not be disbarred. He advanced the position that remedial measures should be imposed because he has not been found to be ungovernable.

Available Dispositions

Pursuant to Section 72(2) of *The Legal Profession Act*, CCSM c. L107, on a finding of incompetence the panel may consider one or more of the following dispositions:

- (a) if the member is a lawyer, disbar the member and order his or her name to be struck off the rolls;
- (c) confirm, vary or impose restrictions on the member's practice or suspend the member from practising law, until the member satisfies the panel that he or she is competent to practise law;
- (d) order the member to pay a fine;
- (e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found incompetent;
- (f) reprimand the member;
- (g) permit the member to resign his or her membership and order his or her name to be struck off the rolls;

- (i) order the member to take instruction or submit to examinations, or both, as the panel considers appropriate;
- (j) rescind or vary any order made or action taken under this subsection;
- (k) make any other order or take any other action the panel thinks is appropriate in the circumstances.

Analysis

As of the date of the consequences hearing, Mr. Jhanji had not made any attempts to improve his competence. Indeed, Mr. Jhanji does not accept the finding of incompetence.

While disbarment is an available option to the panel, we cannot find that Mr. Jhanji has been “wilful and reckless” in failing to maintain standards of competence. For unknown reasons, he is simply incompetent, a fact he will not accept.

The Law Society provided background material regarding Mr. Jhanji’s legal education in India and in Manitoba. (S3, Tab D, Document Book prepared by the Law Society of Manitoba). A review of these documents reveals that he did meet the requirements of University and Law School in India, though with an average grade of 50%. Here in Manitoba, he met the minimum requirements of NCA and CPLED, though not without some difficulty. In its ruling of January 14, 2020, the panel questioned whether Mr. Jhanji was ever competent to practise law. He passed with the minimum requirements for entry into the profession, but was unable to practise with the skills necessary to be a competent lawyer. There is nothing to suggest at this time, that remedial measures such as further instruction and testing would produce a different result.

A reprimand in this case would clearly not enable competency. A fine, which usually has the objective of correcting “controllable” behaviour, would be more appropriate had this been a case of misconduct.

Allowing Mr. Jhanji to resign would carry a lesser stigma than disbarment, however, Mr. Jhanji has made no indication that he would be willing to take this route were it made available to him.

Imposing remedial conditions would require the panel to be able to identify a specific cause for the incompetence. None has been suggested. Restrictions against practising in a specific area would not be useful, as there are no identifiable areas in which Mr. Jhanji is currently competent. A supervision order requires basic competence as a starting point. In addition, supervision would require Mr. Jhanji to accept the fact that he needs help.

Ruling

The panel still finds that Mr. Jhanji is indeed a sincere person with good intentions and agrees that he should not be disbarred. That being said, Mr. Jhanji remains clearly incompetent to practise law at this time. His inability to accept that fact, is perhaps the most significant reason that the panel is prepared to accept the recommendations of the Law Society in disposing of this matter. There can be no remedial measures imposed until such time as Mr. Jhanji understands that he is incompetent to practise in any area of law.

Pursuant to Section 72(2)(c) of *The Legal Profession Act* ("LPA"), Mr. Jhanji will be suspended from the practice of law for a fixed period of three years from the date of this judgment. Further, pursuant to Section 72(2)(k) of the LPA, Mr. Jhanji will be suspended from practising law for an indefinite period until he can demonstrate competence to the satisfaction of the Society's Chief Executive Officer or their designate.

With regard to costs, the Law Society asked for \$5,000, which they indicated represented only a portion of the total costs associated with this matter. The Law Society further took the position that these costs are to be paid in full, only if the Member applies for reinstatement. Mr. Jhanji indicated to the panel that he is severely financially constrained as he has spent \$50,000 to get certified as a lawyer in Manitoba and he did his articling for free.

In considering the issue of costs, the panel takes note of the representation made by Mr. French, one of the lawyers who reviewed Mr. Jhanji's practice, to the Law Society after learning of the January 14, 2020 decision of the panel:

"Whatever the final disposition is, I am strongly of the view that there should be no cost consequences against Jhanji. Jhanji did nothing wrong. He was never competent to practice and should never have been admitted...." (S3, Tab F, Brief of the Law Society of Manitoba)

The panel concurs and there will be no costs. Although Mr. Jhanji significantly increased the costs of this hearing with a multitude of motions and delay, this too is a function of his incompetence.

DATED this 23rd day of June, 2020.



Roberta Campbell (Chair)



Maureen Morrison