

IN THE COURT OF APPEAL OF MANITOBA

Coram:

Mr. Justice Marc M. Monnin
Madam Justice Jennifer A. Pfuetzner
Madam Justice Anne M. E. Turner

BETWEEN:

	)	<i>V. R. Jhanji</i>
	)	<i>on his own behalf</i>
)	
	)	<i>D. E. Swayze, K.C. and</i>
	)	<i>K. V. Murkin</i>
	)	<i>for the Respondents</i>
<i>VIBHU RAJ JHANJI</i>	)	<i>the Law Society of Manitoba,</i>
	)	<i>R. Kravetsky, L. Kosokowsky,</i>
<i>(Plaintiff) Appellant</i>	)	<i>C. K. Dangerfield,</i>
	)	<i>S. Billinkoff, L. French,</i>
<i>- and -</i>	)	<i>A. Southall and L. Troup</i>
)	
<i>THE LAW SOCIETY OF MANITOBA</i>	)	<i>D. A. Johnston</i>
<i>(LSM), THE ATTORNEY GENERAL OF</i>	)	<i>for the Respondent</i>
<i>MANITOBA, THE ATTORNEY GENERAL</i>	)	<i>the Attorney General of</i>
<i>OF CANADA, ROCKY KRAVETSKY,</i>	)	<i>Manitoba</i>
<i>LEAH KOSOKOWSKY, C. KRISTEN</i>)	
<i>DANGERFIELD, SUSAN BILLINKOFF,</i>	)	<i>C. D. Williams</i>
<i>LEONARD FRENCH, ANITA SOUTHALL</i>	)	<i>for the Respondent</i>
<i>and LYNDIA TROUP</i>	)	<i>the Attorney General of</i>
	)	<i>Canada</i>
<i>(Defendants) Respondents</i>)	
	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
	)	<i>January 28, 2025</i>
)	
	)	<i>Written reasons:</i>
	)	<i>February 7, 2025</i>

) ***Motion under r 46.2 of***
) ***the Court of Appeal Rules***
) ***(Civil)***
)
) ***Decision pronounced:***
) ***May 13, 2025***

PER CURIAM

[1] The appellant seeks an order pursuant to rule 46.2 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *Rules*], for a rehearing of an appeal that was heard and dismissed on January 28, 2025 (see *Jhanji v Law Society of Manitoba*, 2025 MBCA 11 [*Jhanji 2025*]), with written reasons delivered on February 7, 2025, and for which no certificate of decision has yet been filed.

[2] While this Court's decision in *Jhanji 2025* dealt with an appeal of a decision to strike a statement of claim without leave to amend, it was clear during the hearing that the appellant was truly complaining about this Court's decision in *Jhanji v The Law Society of Manitoba*, 2022 MBCA 78 [*Jhanji 2022*], where a panel upheld the respondent's, the Law Society of Manitoba (LSM), decision to suspend the appellant.

Procedural Issues

[3] The appellant admitted during this appeal that this Court's decision in *Jhanji 2022* was not appealed. The appellant sought and was denied a rehearing on that appeal (see *Jhanji v The Law Society of Manitoba*, 2023 MBCA 15). In our view, as expressed to him at the hearing of the appeal, it is *res judicata* and final.

[4] In material filed on this motion, the appellant alluded to a request made to the Chief Justice of Manitoba to hold a case management conference under rule 37.1 of the *Rules* to deal with his wish to have a rehearing of his suspension appeal, suggesting that the decision was improperly made as the rehearing request was decided by the same panel that had heard the appeal. He raises the same concern on this request for a rehearing. He argues that section 22 of *The Court of Appeal Act*, CCSM c C240 [the *Act*], precludes appellate panel court members from hearing a request for a rehearing or the rehearing itself.

[5] Section 22 of the *Act* provides as follows:

Judge not to sit in court reviewing own verdict or decision

22 A judge shall not sit on the hearing of an appeal from a judgment or order that the judge made.

Interdiction à un juge de réviser ses propres décisions

22 Un juge ne peut siéger en appel d'un jugement ou d'une ordonnance qu'il a rendus.

[6] The appellant fails to appreciate that section 22 of the *Act* refers to an *appeal* of a judge's previous order or judgment. A rehearing is not an appeal; it is a procedure in an appeal whereby an issue or matter is raised in the yet unfinalized appeal. It is part of the appeal procedure itself and is to be determined by the panel that heard the original appeal. It would be inappropriate to refer the determination to another panel unless the first panel was in whole or in part unable to convene to hear the matter—i.e., by reason of illness or retirement, in which case one or more members of the Court would be asked to substitute.

[7] The appellant's request to the Chief Justice to have the matter referred to another panel has no merit and he was so advised by the Registrar. Similarly, on this request for a rehearing, it would be inappropriate for any part of the request to be referred to another panel.

[8] Rule 46.2(9) of the *Rules* states:

Rehearing

...

46.2(9) There shall be no oral argument on the motion requesting a rehearing unless by direction of the court.

Nouvelle audience

...

46.2(9) Aucune plaidoirie n'est faite relativement à la motion en vue de la tenue d'une nouvelle audience, sauf directives du tribunal à cet effet

We are all of the view that there is no need for oral argument.

Rehearing

[9] As explained by Freedman JA in *Willman v Ducks Unlimited (Canada)*, 2005 MBCA 13 [*Willman*], a rehearing is to be “granted only in exceptional circumstances, where the interests of justice manifestly compel such a course of action” (at para 9).

[10] Situations where the request for a rehearing may be granted include where:

- 1) there is a patent error on a material point on the face of the reasons;

- 2) the appeal was decided on a point of law that counsel had no opportunity to address, and which point could not have reasonably been foreseen and dealt with at the hearing; or
- 3) the court has clearly overlooked or misapprehended the evidence or the law in a significant respect and there is a consequential serious risk of a miscarriage of justice.

(Samborski Garden Supplies Ltd v MacDonald (Rural Municipality), 2015 MBCA 53 at para 16.)

[11] We are all of the view that the appellant has failed to raise any issue that would fall into any of those categories. Nor has he raised any other issue that would justify this panel conducting a rehearing. The thrust of the appellant's request for a rehearing stems from the issue discussed above concerning the composition of the panel that hears a rehearing request, an argument that has absolutely no merit. He also raises again, despite being advised that it is a matter that has been decided and is no longer capable of being reheard by this Court, the validity and correctness of his suspension by the LSM. There are no arguable issues raised by the appellant that justify a rehearing.

[12] Therefore, the request for a rehearing is denied with costs in favour of the LSM and the respondent, the Attorney General of Canada, which both filed memorandums of argument.

[13] The LSM has requested that costs be assessed on a solicitor and client basis. We have not awarded that level of costs on the hearing of the appeal proper and are not inclined to do so on this request for a rehearing, but will agree that, given the total lack of merit, costs on an elevated basis are

warranted. Costs on a motion are to be doubled in favour of the LSM but not the Attorney General of Canada, who has not requested that relief.

Monnin JA

Pfuetzner JA

Turner JA