

Ryan Jesse Manilla v. Law Society of Upper Canada, 2013 ONLSHP 93 (CanLII)

Date: 2013-06-11

LAW SOCIETY HEARING PANEL

Citation: *Ryan Jesse Manilla v. Law Society of Upper Canada*, 2013 ONLSHP 0093

Date: June 11, 2013

File No.: LLC71/12

Before: Barbara J. Murchie (chair)

Barbara A. Laskin

Roger Leclaire

Heard: April 3, 4 and 5, 2013, in Toronto, Ontario

Counsel: Neil J. Perrier, for the applicant

Suzanne Jarvie, for the respondent

REASONS FOR DECISION

INTRODUCTION

[1] Barbara J. Murchie (for the panel):– The Applicant Ryan Jesse Manilla ("Manilla") has applied for a Class L1 Licence to the Law Society of Upper Canada (the "Society"). [Subsection 27\(2\)](#) of the *Law Society Act* requires that applicants for an L1 Licence be of good character.

[2] On March 31, 2009 Manilla was charged with four counts of criminal harassment. One month later he was charged with intimidating a witness, threatening death and failing to comply with an undertaking given to a police officer. The charges were withdrawn on June 18, 2009 and the matter was settled (diverted) on certain conditions. Notwithstanding, the Society commenced an investigation to determine if Manilla met the requirements of s. 27(2).

[3] A hearing was held May 18-20, 2010 before a Law Society Hearing Panel to determine whether the Applicant had satisfied the good character requirements for a licence ("the First Hearing"). In a Decision dated September 8, 2010 ("the September 2010 Decision") the Panel determined that Manilla had not satisfied his burden to demonstrate that, at that time, he was of good character. One panel member dissented writing that Manilla had satisfied his burden. The decision of the majority was upheld on appeal to the Law Society Appeal Panel.

[4] By Notice for Referral for Hearing dated June 28, 2012, the Applicant again seeks a determination that he has met all licensing requirements, including the good character requirement, allowing him to obtain his Class L1 Licence. The Society does not oppose or consent to the application but, because dishonesty is the central issue, urges the panel to carefully consider whether enough time has elapsed to determine if Manilla's change in behaviour is enduring. The Applicant also seeks an exemption from By-law 4 which requires an applicant to be called to the bar within three years of the date of registration into the licensing process, so that he can be called in June 2013 if his application is otherwise successful.

[5] For the reasons that follow, we are of the view that Manilla has demonstrated that he is presently of good character and therefore entitled to his licence to practise law. We also direct the Registrar to extend to June 21, 2013, the time within which he must be called to the bar after registration into the licensing process.

THE FACTS

[6] There is no dispute as to the facts. They are agreed to between the parties and set out in the September 2010 Decision. In short, Manilla was appointed president of his condo board in 2007. He had conflicts with his fellow board members that led to complaints to the Society. The conflicts arose out of the desire of the others to raise fees and upgrade the condo and Manilla's perspective that residents could not afford the fee increase. In the context of these conflicts during the November 2008 to April 2009 time period, Manilla made offensive, threatening and untrue comments to and about the other board members and acted in a manner that resulted in the laying of criminal charges as set out above ("the Events"). In December 2008, Manilla also secretly authored the "Carinci letter," which was purported to be from an offsite owner who alleged that the other board members had shady histories. The letter provided details of bankruptcies, arrests, bribery and other criminal acts that were completely fabricated. It was not until May 2010, days before the First Hearing, that Manilla admitted he was the author of the Carinci letter.

[7] The Applicant is now 32 years of age. He was 27 when the criminal charges were laid. He earned his LLB in 2007 from Osgoode Hall Law School, then worked for Davies Phillips and Vineberg in New York for the summer and stayed on for a year as an associate. He then returned to Toronto and articulated for Pinkofsky's, a criminal law firm. Manilla is married to Ilana Masas, an H.R. professional. They have a three year old daughter, Shayna. Manilla has worked at FEDSEC, a company that delivers security services, since late 2010.

THE BURDEN OF PROOF

[8] It is not in dispute that the Law Society has the burden to establish misconduct giving rise to this hearing, that the Law Society has done so as shown in the September 2010 Decision and that the onus has shifted to Manilla to establish his good character as of the date of the hearing on the balance of probabilities.

THE LAW

[9] Section 27(6) of the Act allows an applicant who has been refused admission to the Society to bring another application for admission at any time. As set out in *Preyra v. Law Society of Upper Canada*, 2003 LSDD No. 25, a second hearing is not a re-hearing. Section 27(6) permits the applicant to prove that he is now of good character on the basis of fresh evidence or a material change in circumstances since the last application. The second hearing, therefore, allows the Applicant to bring new evidence relating to his character development since the First Hearing.

[10] Good character has been defined by Madam Justice Mary Southin of the British Columbia Court of Appeal as follows:
"Good Character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law ... Character ... comprises ... at least these qualities:

1. An appreciation of the difference between right and wrong;
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not do that which is wrong no matter what the consequences may be to oneself;
3. A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.^[1]

[11] The factors to be considered in a determination of good character in admission cases have been set out in the case law as:

- a) the nature and duration of the misconduct;

- b) whether the applicant is remorseful;
- c) what rehabilitative efforts, if any, have been taken, and the success of such efforts;
- d) the applicant's conduct since the proven misconduct; and
- e) the passage of time since the misconduct.[2]

THE EVIDENCE

[12] Manilla testified on his own behalf in a forthright and credible manner. He also led evidence from Dr. Philip Edwin Klassen, a forensic psychiatrist, and from Dr. Percy Wright, a psychologist. Neither expert testified at the first good character hearing, nor was any expert evidence proffered at that hearing. Mr. Ali Shirazi and Mr. Ross Kirstens, colleagues at Manilla's workplace, testified for the first time as well.

[13] Alan Grant, the Society investigator, gave evidence on the processing of Manilla's second application. The Society called no evidence, but cross-examined all witnesses.

[14] Dr. Klassen was a very impressive witness. He has considerable experience as a forensic psychiatrist since he began his fellowship in forensic psychiatry at the University of Toronto in 1992. Between 1993 and 1998, he was attending psychiatrist and head of the anger management clinic at the Clark Institute of Psychiatry and Centre for Addiction and Mental Health, now called CAMH. He co-authored a book chapter in a book published in 2005 with Dr. Wright dealing with forensic assessment. Dr. Klassen has testified as a forensic psychiatric expert in various types of proceedings before the criminal courts and regulatory bodies, including for the Law Society in *Preyra* in 1999 and 2003.

[15] Dr. Klassen referred Manilla to Dr. Percy Wright for a physiological testing. He explained that Dr. Wright's functional inquiry and mental status examination was a sort of psychiatric equivalent to a physical examination. Dr. Wright testified as to his findings. From the perspective of Dr. Klassen's report, those findings were unremarkable.

[16] Dr. Klassen provided a psychiatric assessment of Manilla dated October 29, 2012 (Exhibit 1, tab 10) and testified in person. Dr. Klassen concluded that Manilla did not meet the criteria for any psychiatric diagnosis, that his behaviour in relation to the Events was a "one-off," that it was not characteristic given his history and that, in his view, Manilla was unlikely to repeat that behaviour.

[17] Dr. Klassen explained that when the issue is whether a certain kind of behaviour is likely to re-occur, a psychiatrist or psychologist will typically "look for patterns of that or similar kinds of behaviours or antecedent which may later morph into the kind of behaviour in question. To the extent that a particular kind of behaviour has been present longitudinally, there are greater concerns that it will continue into the future." (See p. 14 of the transcript of Dr. Klassen's testimony.)

[18] Dr. Klassen reviewed the September 2010 Decision. He also reviewed additional material including the Agreed Statement of Facts from May 2010, a transcript of the meeting between Manilla and the Society from February 2012, and an investigation report of the Society dated April 13, 2012.

[19] To get insight into Manilla's history, Dr. Klassen interviewed Manilla's former personal partner, Ms. Gordon. He explained that he thought it was valuable to have a snapshot of Manilla's past from somebody without a vested interest in him. Dr. Klassen also spoke with Manilla's wife, Ms. Masas, about Manilla at the time of the Events and thereafter.

[20] Dr. Klassen considered the cause of the Events. He concluded that, in the time frame at issue, Manilla was somewhat arrogant, impulsive, driven, competitive, and somewhat action-oriented. Manilla had just returned from a string of highs, was driven by a righteous cause and let his anger escalate. He did not disengage or step back and consult others or put this matter into perspective. He indicated other contextual factors were probably some degree of hubris and ego, flowing from his early successes and experiences in New York and his articling experience in Toronto.

[21] Manilla's testimony as to the cause of the Events and his misbehaviour is simpler but similar. He said that he had just come back from New York and that his ego was huge. He let his anger get out of control and engaged in "disgraceful behaviour" He said he was truly sorry for it.

[22] Dr. Klassen addressed the issue of whether Manilla's lying and manipulation were likely to repeat. He concluded that Manilla had lied, but was not a liar, that his behaviour around the Events and the Carinci Letter was aberrant. Dr. Klassen explained that these traits are heritable and quite persistent and once established tend to be recurrent. Based on the information he gathered across time and across contexts, Dr. Klassen concluded that Manilla did not exhibit a dishonest or manipulative character. As he saw there was no pattern of lying or manipulation in Manilla's history, Dr. Klassen concluded that the bad behaviour was more consistent with a fact-specific or episodic process than a continuous process. Further, he said there was no basis on which to diagnose a personality problem or other kind of problem which supported that conclusion.

[23] Manilla testified that he would not be before the hearing panel seeking his licence if he did not think he could be a good lawyer. He said he understood that integrity meant admitting wrongdoing and that he had to live by his moral principles and follow the rules of society. Looking back with the knowledge he now has, he would have done things very differently back in 2007/08; he would have asked for help and taken steps to control his anger. He would have stepped back and thought about how to de-escalate the situation – techniques he now uses in life generally.

[24] Dr. Klassen did not see Manilla's failure to report his authorship of the Carinci Letter for a year after the events in question as a continuing and new example of his dishonesty. He explained that there is typically a process people go through in circumstances like these. It involves fear, anger, self-reflection and consideration of who should be told; the process takes time. To him, the Events (November 2008 to April 2009) were more problematic as they were errors of co-mission in terms of falsehood and intimidation. The subsequent failure to claim authorship of the letter was an omission of the disclosure. He explained that often people become paralyzed and scared once they realize the seriousness of the situation they are in; a degree of inertia often accompanies that realization, such that it takes an outside force to motivate disclosure. Cognitive avoidance is a natural response to issues people just do not want to face. Dr. Klassen was therefore not surprised that there was not an earlier admission. He did not see as particularly unusual the arc going from the (active) lying and manipulation to the (passive) non-disclosure period, to the disclosure and the resolution.

[25] Dr. Klassen summarized his opinion as follows:

It would appear on the basis of the information that I have that this was an aberration; that this was something that was somewhat context and phase specific; and that there is neither the antecedent history of lying and manipulation or any history of lying or manipulation or intimidation in other contexts to suggest continuity or even particular vulnerability to that going forward.

Of course, I'm not suggesting that I am a fortune-teller who can tell the future, but what I can tell you is that egocentric and deceitful ways of interacting with people are things that we identify as having a process. Typically, if that's going to be something that continues, there will be hallmarks of that in childhood, in adolescence, in early adulthood, and so on.

So all I can tell you is that this gentleman's presentation, as I understand it, is not consistent with somebody who we would expect to have difficulties of this nature going forward, rather it appears to be a situation where this gentleman's difficulties were triggered by a particular point in his life and a particular context. I think, in addition, I would add his steps post hoc have been pretty impressive.

[26] In concluding his report, Dr. Klassen referenced the September 2010 decision which stated, "good character, for the purpose of admission to the Bar, is defined as moral and ethical strength, integrity, candor, empathy and honesty." He went on to say "[t]his gentleman appears to have demonstrated these values, throughout much of his life, and latterly (since 2008)."

NATURE AND DURATION OF THE MISCONDUCT

[27] Both parties agree the misconduct at issue was serious. Manilla was threatening, manipulative and dishonest. The September 2010 decision lists the objectionable behaviour as:

- a) Emails telling other board members they risked being shot by residents if they did not agree to Manilla's budget proposals;
- b) Threatening other board members with defamation suits;
- c) Indicating he enjoyed making the other board members squirm;
- d) Making the board members who wintered in Florida believe they might be investigated by the United States Department of Homeland Security as drug smugglers;
- e) Engaging in character assassination by writing the Carinci letter;
- f) Lack of candour in not admitting authorship until five days before the First Hearing;
- g) Using Carinci's name (Carinci was a non-resident owner) on the letter;
- h) Lack of civility in dealing with Warren Kleiner, a lawyer;
- i) Attempts to extort letters for Warren Protective Service and Brookfield Management; and
- j) His complete lack of empathy with respect to the effect his actions would have on others.

[28] As set out in *Preyra*, these findings provide the necessary context against which attempts at rehabilitation can be weighed. But it is the new evidence that must form the basis of any determination under s. 27(6).

[29] The Events occurred over a six-month period. We accept Dr. Klassen's opinion that it is the Events with which we should be most concerned in making our determination. The Carinci Letter extended the deception by another year but, as Dr. Klassen indicated, the delay in admitting dishonesty is not unusual, as people take time to come to terms with their own failures. In *Preyra*, the conduct lasted for four years; the misconduct in *Armstrong* was over two years.

EXTENT OF REMORSE

[30] The Society accepts that Manilla is remorseful and acknowledged that "this has been horrible for him." One of the complainants agreed. Having sat through a good part of the hearing, he advised counsel that Manilla had suffered enough and indicated he would be content if the Society gave Manilla his licence. Another complainant who was party to this statement did not disagree.

[31] Manilla's remorse was abundantly evident from his actions since the First Hearing, as well as from his evidence. His continuing efforts at rehabilitation all support remorse. In his testimony before the panel, Manilla talked several times about the shame he felt for letting down his community and his family by his behaviour. He apologized wholeheartedly to the complainants who were in the hearing room. He told them he was truly sorry for the pain he caused them and that he did not have any excuse. He said that nothing justifies what he did. We accept that Manilla is remorseful.

REHABILITATION

[32] Dr. Klassen described the rehabilitation Manilla had undertaken as "pretty impressive." Manilla testified about, and Exhibit 1 supports, his therapy and extensive community service. Manilla took anger management counseling and succeeded to such an extent that he now volunteers to counsel others through that same agency. Manilla continues to seek help from Dr. Gotziaman, a psychotherapist, and from Abe Kass, a social worker and therapist, both of whom provided updated reports.

[33] Manilla volunteered at the Canadian Red Cross Disaster Management Program and at Jewish Child and Family Services. He continues to volunteer at Victim Services of York Region, taking a minimum of two twelve-hour shifts a month and attending training sessions; he is said to be held in the "highest regard" in providing services to victims in sudden death, motor vehicle accidents and domestic violence situations. He also continues to volunteer at Rouge Valley Retirement Residence. It is

noteworthy that Manilla's community service is not simply in response to the current application. Manilla volunteered in his community throughout high school and at his condo board although, in the latter case, with unfortunate consequences.

[34] Dr. Klassen explained that when people are challenged by their first great loss, they either continue with the same behaviour or start to renegotiate relationships with themselves and with other people and to make changes. His view was that, for Manilla, the gravity of the potential loss of his dream of being a lawyer, combined with the insights received through therapy and the process of having to face up to and admit his behaviour, caused him to make changes in his life.

[35] We are impressed with the extent and sincerity of Manilla's rehabilitation. He told us about the steps he has learned to take in stressful situations where anger can result and how he now understands the difference between reacting and responding. He was without reservation in admitting his wrongdoing. Our conclusion on rehabilitation is based on Manilla's forthright testimony about his own ongoing personal growth and the observations and conclusions of Dr. Klassen.

CONDUCT SINCE THE EVENTS

[36] Dr. Klassen's conclusion that there has been no repetition of the behaviour behind the Events and Carinci letter is supported by the evidence of co-workers. Manilla called two witnesses with whom he had worked. Ross Kirsteins, Master Scheduler (Operations Manager) at FEDSEC, was Manilla's boss. Ali Shirazi reported to Manilla. supervisors.

[37] Kirsteins testified that, since his hiring in Dec 2010, Manilla was responsible for scheduling, hiring, firing and disciplining security guards and had to respond to last-minute client requests for guards, supervise and deal with clients' complaints. He described Manilla's position as a high-stress one which required him to engage in difficult interactions, such as firing or disciplining guards. He said Manilla was hard-working, easy to get along with and calm and that he carried out his duties without conflict.

[38] Ali Shirazi met Manilla in December 2010 when he joined the FEDSEC. Mr. Shirazi testified that Manilla was well-liked, honest and organized. Both Mr. Kirsteins and Mr. Shirazi testified that Manilla told him about the Events and that he had been charged by police. Both Mr. Kirsteins and Mr. Shirazi were surprised and said the behaviour was not like him.

[39] Exhibit 1 contains a number of letters from colleagues at FEDSEC who attest to the respect he enjoys in the workplace, his handling of stressful situations, and the honesty which he has exhibited in admitting his wrongdoings to co-workers.

[40] The evidence supports the conclusion that Manilla's behaviour was aberrant and that his rehabilitative efforts have been successful.

THE PASSAGE OF TIME SINCE THE EVENTS

[41] The Events took place in 2008/2009. Four years have elapsed since that behaviour ended. If the Carinci letter is included, then three years have passed since Manilla admitted authorship.

[42] Although passage of time is a factor that must be considered, it is the quality of the rehabilitation efforts that occurred during that time that is really at issue. Manilla's four-year period is replete with therapy, counselling, personal growth and volunteer work, in addition to what appears to be an excellent record on issues of integrity in his current workplace. Manilla has used the passage of time fully to effect his rehabilitation. It is sufficient.

SUMMARY ON GOOD CHARACTER

[43] We are satisfied that Manilla has demonstrated he has the honesty, integrity, candour, empathy and moral fibre required to be admitted to the profession as a L1 licensee.

THE CALL TO THE BAR

[44] Manilla also asks that we direct the Registrar to dispense with the three-year requirement under By-law 4 and permit him to be called to the Bar by June 21, 2013 without re-writing his licensing examinations. Under By-law 4, Manilla is required to be called to the bar by April 30, 2012, failing which re-examination is required.

[45] The basis on which the request is made is two-fold: (i) there is no evidence he does not meet the academic qualifications and (ii) the Society was capable of and ought to have expedited this hearing. There is no dispute that Manilla graduated in the top 10% of his class at Osgoode Hall Law School, that he practised as a first year associate at Davies in New York and that he is sincere in his desire to practise law.

[46] In a letter dated February 21, 2013, Manilla's articling principle, Brian Ross, praised his desire to learn and understand how the law and criminal procedure worked and indicated his willingness to act as a mentor (in criminal law) if Manilla is allowed to practise. Manilla testified, supported by a 2012 letter, that his second cousin, David Rosen, is also prepared to mentor him if his application is successful. Rosen practises in a law chambers with about 30 other lawyers which Manilla hopes to join. We accept that Manilla will have a supportive network on which to rely when he commences practice.

[47] Manilla's counsel argued that the Society was slow in processing Manilla's second application and that, without that delay, this matter would have been heard within the required time frame. We do not accept that position. The second application was made August 16, 2011. Mr. Grant testified that he handled the file in the normal course. He did not give it any greater priority than other applications, as that would not have been appropriate or justified. There was nothing in Mr. Grant's testimony or in his file that, in our view, supported unacceptable or unexplained delay in the processing of Manilla's application.

[48] Section 49.26 of the Act permits the panel to include such terms and conditions in its order that it deems appropriate. We are satisfied that, in all of the circumstances, it is appropriate to extend the three-year period set out in By-law 4, given the proximity of the date of this decision to the April 30 deadline that Manilla would have had to meet to be called to the Bar in the normal course. We have no cause for concern about Manilla's competence to practise, such that he should be re-examined; nor has the Law Society suggested that his knowledge of the law is anything but current. To apply the three-year provision in this case, thus preventing Manilla from participating in the June 2013 call to the Bar, would not serve any fundamental purpose. Under these circumstances we direct that the deadline be extended to June 21, 2013 to allow Manilla to be called to the Bar without re-writing his licensing examinations.

[49] The parties may make submissions as to costs. The Society should provide its written submissions in support within 21 days of the release of this decision. Manilla should provide his written responding submissions within 14 days thereafter. If there is reply, it should be served within seven days.

[1] *Armstrong v. The Law Society of Upper Canada*, 2009 ONLSP 29 (CanLII) at para. 24 quoting Mary F. Southin, Q.C. "What is 'Good Character'" (1987) 35 The Advocate 129 at page 129.

[2] *Ibid*, paragraph 29.