

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

<i>DAVID CHOCHINOV</i>	)	<i>R. Taylor</i>
	)	<i>for the Appellant</i>
	)	
<i>Appellant</i>	)	<i>N. P. Steen</i>
	)	<i>for the Respondent</i>
<i>- and -</i>	)	
	)	<i>Chambers motion heard:</i>
<i>THE INQUIRY COMMITTEE OF</i>	)	<i>May 21, 2026</i>
<i>THE COLLEGE OF OCCUPATIONAL</i>	)	
<i>THERAPISTS OF MANITOBA</i>	)	<i>Decision pronounced:</i>
	)	<i>May 26, 2026</i>
<i>Respondent</i>	)	
	)	<i>Written reasons:</i>
	)	<i>May 29, 2026</i>

TURNER JA

[1] The appellant is an occupational therapist and a member of the College of Occupational Therapists of Manitoba (the college). After a hearing by a panel of the Inquiry Committee of the College of Occupational Therapists of Manitoba (the panel), he was found guilty of seventeen charges of professional misconduct (the discipline decision). The penalty imposed included a four-month suspension of the appellant's registration, together with several conditions that he must fulfill prior to being allowed to resume his occupational therapy practice (the penalty decision).

[2] The appellant now seeks a stay of the discipline and the penalty decisions pending his appeal pursuant to section 48 of *The Occupational Therapists Act*, CCSM c O5 [the *Act*].

[3] The charges of professional misconduct mainly arose from an incident with a young, female client (the complainant). During a session, the appellant made a comment about the complainant's "cleavage". The complainant left the session very upset. The complainant's mother subsequently called the appellant and, without the complainant's consent, the appellant discussed aspects of the complainant's treatment. He also sent the complainant several text messages.

[4] The parties agree that the test to be applied for a stay pending appeal is the three-part test set out in *RJR — MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 (SCC). The appellant must establish that:

1. there are arguable issues to be determined on appeal;
2. the appellant will suffer irreparable harm if the stay is not granted; and
3. the balance of convenience favours granting the stay.

Is There a Serious Issue to Be Determined?

[5] In his notice of appeal, the appellant raises twenty-five grounds of appeal that can be summarized as alleged procedural errors, issues of delay, issues of bias, as well as that the respondent and the panel failed to follow several provisions of the *Act*.

[6] The threshold for whether there is a serious issue to be determined is relatively low (see *Ghazali v Guisti*, 2024 MBCA 94 at paras 24-25). Generally, the threshold will be satisfied if an appeal is neither frivolous nor vexatious.

[7] While I agree with the respondent that some of the issues raised by the appellant have a low chance of success given the standards of review that will be applied, I do not agree that the appeal is frivolous, vexatious or has no merit.

[8] As a result, in my view, the appellant's appeal does raise serious issues to be determined on appeal.

Will the Appellant Suffer Irreparable Harm?

[9] When a professional is facing sanctions from its regulator, their ability to receive compensatory damages is difficult. In most cases, the professional does not have the ability to seek damages against a regulator. In addition, harm to reputation can be difficult to quantify (see *Hove v College of Physicians & Surgeons of PEI*, 2025 PECA 3 at para 26 [*Hove*]).

[10] Under this stage of the inquiry, the focus is on the harm that may be caused to the appellant. The appellant has been an occupational therapist in Manitoba for approximately twenty-four years and estimates that he has treated over 3,000 clients. The complaint that led to the professional discipline proceedings was only the second complaint made against the appellant over the course of his career. A previous complaint, made by a different client, was dismissed by the college.

[11] The appellant is the sole breadwinner of his family, which includes five children.

[12] The appellant's ability to earn a livelihood is impaired by the penalty decision. He has had to transfer his clients to other occupational therapists and he asserts that he may not recover those clients in the future.

[13] Whether the appellant's appeal of the penalty decision is successful remains to be seen. However, in the circumstances, I am satisfied that the appellant has established that he would suffer irreparable harm if a stay was not granted pending his appeal.

Does the Balance of Convenience Favour Granting the Stay?

[14] At this stage, I must determine which of the two parties will suffer the greater harm from granting or refusing to grant a stay pending appeal. Where, as here, a stay application is sought relating to an order of a professional regulatory body, I must consider the protection of the public as part of the balance of convenience (see *Hove* at para 31).

[15] As noted, the appellant has practiced as an occupational therapist for twenty-four years and this is the only instance of professional discipline against him.

[16] The incident from which the complaint arose occurred in August 2018. The complaint was filed in June 2020. In November 2022, after an investigation was undertaken, the complaint was referred to the respondent. The panel rendered the discipline decision in November 2025 and the penalty decision in April 2026. During this time, the appellant continued to see clients

without complaint and the college did not place any conditions or restrictions on his practice.

[17] While I do not minimize the seriousness of the complaint or the serious impact the incident had on the complainant, in the present circumstances, I do not believe that the public would be placed at risk if the penalty against the appellant was stayed pending appeal. The balance of convenience favours the appellant in these circumstances.

Disposition

[18] The appellant's request for a stay pending appeal is granted. The issue of costs will remain with the appeal.

JA