



Decision No. 20110822

THE LAW SOCIETY OF MANITOBA

In the Matter of: THE LEGAL PROFESSION ACT, S.M. 2002, c. 44

And in the Matter of: Applicant A

Date of Decision: September 20, 2011

Panel Members: Ted Bock (Chair), Lindy Choy and Miriam Browne

REASONS FOR DECISION

Applicant A, who has not held a practicing certificate since 1986, wishes to represent a litigant on a domestic matter. To that end, on June 21, 2011 he submitted an application to the Law Society of Manitoba to resume active practice. On July 6, 2011 that application was approved by the Director of Admissions and Membership on certain conditions. Applicant A objected to the conditions. On July 15, 2011 he filed the notice of appeal that led to this hearing of a panel of the Admissions and Education Committee on August 22, 2011.

The Panel received both oral and written submissions from Applicant A and counsel for the Law Society. At the conclusion of the hearing the parties were informed that it was the unanimous decision of the Panel that Applicant A's appeal be dismissed, with written reasons to follow. These are those reasons.

Background

Applicant A was called to the Bar and became a member of the Law Society of Manitoba in 1958. On his application to resume active practice he indicated that he had ceased actively practicing law in 1981 when he was elected as a member of the Manitoba Legislative Assembly. During the political career that followed his election in 1981 Applicant A held various senior cabinet portfolios. Indeed, for a time he was Manitoba's Attorney General.

Applicant A is motivated by the best of intentions in his efforts to resume active practice. He wants to assist just one litigant in respect of a domestic matter on a *pro bono* basis simply because he was persuaded that this person was in serious need of legal assistance, and that he was in a position to render such assistance. He has told the Law Society that he has no intention of doing anything more than that, and he has assured the Law Society that he would not be charging his prospective client a fee. In effect, he seeks a limited practicing certificate that would permit him to provide *pro bono* legal services to this otherwise unrepresented litigant. Furthermore, his prospective client is prepared to release him from any liability arising from his retainer.

The decision from which this appeal is taken

As noted earlier, the Director approved Applicant A's application to resume active practice on certain conditions. The operative part of the Director's decision, dated July 6, 2011, is as follows:

"I have considered that you have been out of the practice of law for a significant period of time and that there have been significant changes in the law since the date you changed your status to non-practising. Based upon the information that you have provided to the Law Society I am unable to determine that you are competent to practice law at this time. Accordingly, I have approved your application to resume active practice

on conditions and most of which must be met prior to your resumption of active practice and your status being changed to practicing. Those conditions are that you:

- 1) Read the current CPLED program materials (formerly known as the Bar Admission materials), *The Legal Profession Act*, the Law Society Rules as well as the *Code of Professional Conduct*,
- 2) Provide a certification of completion of the reading requirement (on the enclosed form);
- 3) Pass a qualification exam, established by the Education and Competence Department of The Law Society of Manitoba; and
- 4) Practice, for a minimum period of one year following the date that your status is changed to practicing, under the supervision of a member who has been approved by the Law Society to act as your supervisor. After the one year period has expired this condition will be removed upon receipt of a satisfactory report from your supervisor recommending that the supervision be terminated.

Issue

At issue on this appeal is whether the decision of the Director of Admissions and Education was correct.

The Law

Law Society Rule 5-28(1) provides that admissions decisions may be appealed to a panel of the Admissions and Education Committee. (Relevant portions of legislation and rules referred to in this decision are appended hereto.) The standard of review on such an appeal is correctness.

Under s. 17(5) of The Legal Profession Act C.C.S.M. c. L107 the Law Society has the jurisdiction to make rules that, among other things, “...(e) govern practicing certificates” and “(f) govern the resumption of practice by non-practising members.” Rule 5-28.2 speaks to the resumption of active practice. It provides that a member who is non-practising “must apply to resume active practice in Manitoba and the chief executive officer may issue a practicing

certificate to a member, with or without conditions or restrictions, provided the member: ... (b) passes such assessments or examinations and fulfills such requirements as may be prescribed by the chief executive officer." (underlining added)

The Act and the Rules must be read in light of the purpose of the Law Society, expressed in s. 3(1) of the Act in these terms: "The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence."

Discussion

Applicant A's desire to render assistance on a pro bono basis to someone in need of legal services is commendable. Nevertheless, the Law Society is bound to govern admission and re-admission to practice in accordance with The Legal Profession Act and the Rules passed by the Benchers. At present, there is no provision or rule which would permit the Law Society to issue a limited practicing certificate on the terms that were suggested by Applicant A.

The Director of Admissions (to whom the chief executive officer of the Law Society delegated the task of considering Applicant A's application) noted that Applicant A was prepared to provide legal services pro bono, and also took into account that his prospective client was prepared to release Applicant A from any future liability arising out of his retainer. Neither point is of assistance to Applicant A, the Director correctly concluded. The Law Society is bound to protect the public interest in the delivery of legal services whether or not those services are provided gratuitously. Nor is the public interest served if a lawyer is permitted to obtain from a client or prospective client a release in favour of that lawyer in respect of future services – the lawyer receiving the release is placed in a conflict of interest, and the public's confidence in the integrity of the profession is undermined.

The Director considered whether Applicant A had established that he was competent to resume active practice. He observed that Applicant A had not held a practicing certificate for 25 years, and that in the intervening years there had been numerous developments in the law. Based on that information, he concluded that he was unable to determine whether Applicant A was competent to practice law at this time. Hence, reasoned the Director, the need for the conditions forming part of his decision to approve Applicant A's application to resume active practice.

The Panel accepts the Director's conclusion. In doing so, it is supported by Applicant A's own candid responses to questions posed by the Panel at his appeal. Applicant A told the Panel that he did not currently consider himself to be competent to practice law generally. He also told the Panel that he wasn't familiar with the current state of family law, the area of law in which he would seek to limit his practice, but felt that he was capable of acquiring that knowledge as circumstances might require.

The Panel found that all of this spoke to the reasonableness of the conditions prescribed by the Director of Admissions and Education in his decision, and the correctness of that decision.

Decision

The Panel was unanimous in its decision to dismiss Applicant A's appeal.

September 20, 2011

Ted Bock
Chair of the Admissions and Education Appeal Panel

C.C.S.M. c. L107
The Legal Profession Act

PART 2
THE LAW SOCIETY

Purpose

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.

Duties

3(2) In pursuing its purpose, the society must

- (a) establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba; and
- (b) regulate the practice of law in Manitoba.

Benchers' mandate and powers

4(2) The benchers shall govern the society and manage its affairs, and may take any action consistent with this Act that they consider necessary for the promotion, protection, interest or welfare of the society.

General power to make rules

4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.

Rules are binding

4(6) The rules are binding on the society, the benchers, the members and everyone who practises or seeks the right to practise law under the authority of this Act, other than Part 5 (representation in highway traffic matters).

Rules about membership and authority to practise

17(5) The benchers may make rules that

- (a) establish categories of membership and prescribe the rights, privileges, restrictions and obligations that apply to them;
- (b) establish requirements, including educational and moral requirements, and procedures for admitting persons as members, which may be different for different categories of membership;
- (c) govern the admission program for articling students;
- (d) establish requirements and procedures for the reinstatement of former members;
- (e) govern practising certificates;
- (f) govern the resumption of practice by non-practising members.

LAW SOCIETY RULES

**Part 5
Protection of the Public**

Appeal of admissions decisions

5-28(1) Subject to subsection (8), a decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee within 14 days of receipt of written confirmation of the decision and the right to appeal. (ENACTED 10/07) (AM. 04/10)5

**Resumption of Active Practice
Resuming active practice**

5-28.2 A member who is non-practising, inactive or who has completed a period of suspension, must apply to resume active practice in Manitoba and the chief executive officer may issue a practicing certificate to a member, with or without conditions or restrictions, provided the member:

- (a) provides proof that he or she is of good moral character and a fit and proper person to practise;
- (b) passes such assessments or examinations and fulfills such requirements as may be prescribed by the chief executive officer;
- (c) pays to the society an amount equal to the annual non-practising fees for each of the years during which the member has not practised, to a maximum of five years;
- (d) pays the annual practising fee and required contributions; and
- (e) pays to the society all money owing by the member to the society.
(AM. 05/07; 10/07; 10/08; 05/10)