



Decision No. 20130621

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF: Student A

- and -

IN THE MATTER OF: THE LEGAL PROFESSION ACT

PANEL: Dean Scaletta, Chairperson
Annette Horst, Member
Kenneth Molloy, Public Representative

HEARING DATE: June 21, 2013

APPEARANCES: None

DECISION

Re: An Appeal by Student A of a competency evaluation decision of the Director – Professional Education and Competence of The Law Society of Manitoba, dated May 2, 2013.

I. Introduction & Background

1. The applicant, Student A, was enrolled as an articling student in the 2012-2013 Manitoba Canadian Centre for Professional Legal Education (“CPLED”) Program (“the Program”).

2. The Program consists of nine modules, each of which includes a Competency Evaluation ("CE") on which the student must attain a grade of "Competency Demonstrated" ("CD"). To receive a grade of CD, the student must achieve a weighted cumulative score of 60.00 or better.
3. Before a grade of "Competency Not Yet Demonstrated" ("CNYD") is assigned, the submission is re-read by a different Learning Group Facilitator ("LGF") for the same module.
4. A student who fails to receive a CD is entitled to complete a supplementary CE. The supplementary CE is also re-read by a different LGF, before a final grade of CNYD is assigned. Pursuant to the Law Society Rules, a failure to achieve a CD on a supplementary CE means that the student has failed to successfully complete the Program, such that he or she is not eligible to be Called to the Bar of Manitoba.
5. By letter dated January 7, 2013, the Director advised Student A that he had received a grade of CNYD on his CE for the Legal Research & Writing module. He was also advised of his entitlement to complete a supplementary evaluation, to be scheduled in April, 2013.
6. By letter dated May 2, 2013, the Director advised Student A that he had received a grade of CNYD on his Supplemental CE, and that he had therefore failed to successfully complete the Program. Particulars of his appeal rights were also set out in the letter.
7. Student A submitted a Notice of Appeal to the Admissions and Education Committee, which was received on May 13, 2013. The Notice did not take issue with grading of the Supplemental CE, but requested that Student A be allowed to either re-write the Supplemental CE or simply repeat the Legal Research and Writing module only (as opposed to the whole of the Program).
8. By letter dated June 3, 2013, the General Counsel for The Law Society of Manitoba consented to the appeal on the following terms:

"I can advise the Law Society is prepared to consent to [Student A's] appeal. In particular, the Society is agreeable to having [Student A] write an additional supplemental examination and to assist Student A, the Society is prepared to provide him with five hours of tutorial assistance."

II. Materials Before the Appeals Sub-Committee

1. Letter from the Director to Student A dated January 7, 2013, together with CE Re-Read Grading Sheet and CE Re-Read Marking Sheet.

2. Letter from the Director to Student A dated May 2, 2013, together with Supplemental CE Grading Sheet, Supplemental CE Marking Sheet, Supplemental CE Re-Read Grading Sheet, Supplemental CE Re-Read Marking Sheet.
3. Notice of Appeal to the Admissions and Education Committee, together with cover letter from Taylor McCaffrey LLP dated May 9, 2013.
4. Brief to Admissions and Education Committee of The Law Society of Manitoba, submitted by Taylor McCaffrey LLP.
5. Letter from The Law Society of Manitoba to Taylor McCaffrey LLP dated June 3, 2013.

III. Relevant Excerpts from *The Legal Profession Act* and the Law Society Rules

The Legal Profession Act

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.

Law Society Rules

Successful completion of CPLED Program

5-10 (2) Subject to rule 5-5(3) and subsection (4), an articling student will have successfully completed the CPLED program if he or she receives a grade of competency demonstrated on all competency evaluations and examinations.

Supplemental competency evaluations and examinations

5-10 (3) An articling student who fails to receive a grade of competency demonstrated on a competency evaluation or examination is entitled to complete a supplemental evaluation or examination.

Passing grade for supplemental competency evaluations and examinations

5-10 (4) In order to pass a supplemental competency evaluation or examination, an articling student must receive a grade of competency demonstrated.

Result final

5-10 (5) Subject to rule 5-11 (1), the result of a supplemental competency evaluation or examination is final.

Appeals

5-11 (1) An articling student who receives a grade of competency not yet demonstrated on a supplemental competency evaluation or supplemental examination may appeal the grade to the [Admissions and Education] committee within 14 days of being issued the grade and being advised of the right to appeal.

Hearings

5-11 (2) A panel of the appeals sub-committee may hold a hearing to consider an appeal under subsection (1) or to consider a matter referred to it by the chief executive officer. The decision of the panel is final.

Repetition of CPLED Program

5-13 An articling student who does not successfully complete the CPLED program may apply to the chief executive officer for permission to repeat the program, but is only eligible to repeat the program twice.

IV. Issue

The only issue on this appeal is whether Student A should be permitted to write an additional supplemental examination with a view to achieving a grade of CD in the Legal Research & Writing module of the Program.

V. Discussion

The Committee notes that assessing the competence of a professional student in a particular area of practice is an inherently subjective exercise which draws heavily upon the unique experiences of the assessor. The marking tools used to assess competence in the context of the Program are designed to minimize this subjectivity, but it nonetheless remains as an integral element of the assignment of a score to each of the 27 individual assessment criteria. The application of the established weighting factors in each of the nine broad areas of assessment may in some cases serve to mask, or alternatively to exacerbate, the impact of one or more poor scores (0 to 2) on the overall grade.

In this case, it was noted that the poor grades assigned to the "Conclusion" very likely contributed significantly to the fact that Student A fell short of a CD by only a few points. The Committee encourages Student A to focus his energies on improving in that particular area.

One of the unique aspects of this appeal is that Student A is not challenging the grading of his Supplemental CE; he is not saying he earned a passing mark.

What is not unique is that he experienced difficulty achieving a CD in an area of the law to which he was not significantly exposed during his articles. Many CPLED students, particularly those working with in-house legal departments, in government or quasi-

government offices, or in boutique firms specializing in discrete areas of the law, face similar challenges. The Committee was of the view that it is incumbent upon those students to avail themselves of the many resources offered to them by and through The Law Society of Manitoba.

The individual circumstances of Student A are indeed compelling. He was educated in a common law jurisdiction and worked as a practicing lawyer for a number of years prior to coming to Canada. Over the past decade, he has invested considerable time and energy in his quest to qualify for practice in Manitoba (and, by extension, the remainder of Canada). Having passed all of the other modules in the Program, achieving a CD in Legal Research & Writing represents the last education-related “hurdle” that he must overcome. In these unique circumstances, the Committee felt that some flexibility was warranted, notwithstanding the fact that the CNYD (which, as noted, is not being challenged) was only assigned after a rigorous review of the submission.

VI. Decision

The appeal is allowed. Student A will be permitted to write an additional supplemental examination with a view to achieving a grade of CD in the Legal Research & Writing module of the Program, however, the re-write may only take place after Student A has completed the five hours of tutorial assistance which has been offered to him by The Law Society of Manitoba.

July 30, 2013

Dean Scaletta, Chairperson

Annette Horst, Member

Kenneth Molloy, Public Representative