



Decision No. 20080110

THE LAW SOCIETY OF MANITOBA

In the Matter of: Student A - Appeal of Admission Decision

Hearing Date: January 10, 2008

Committee Members:

Jack Cram (Chair)

Dean Scaletta

Linda Brazier Lamoureux

David Kroft

Peter Cole, Q.C.

Grant Mitchell, Q.C.

Paul Grower

Joelle Robinson

Elliot Leven

Adam Bergen

Dean Harvey Secter

DECISION

The appellant, Student A appeals the decision of the Director of Professional Education and Competence, to place conditions upon the approval for his call to the bar. The conditions imposed were as follows:

1. Practice under the supervision of a lawyer approved by the Law Society of Manitoba;
2. Ensure that his supervisor files with the Law Society of Manitoba quarterly reports confirming that he continues to practice competently and ethically or setting out the details if that is not the case;
3. Provide quarterly reports from a medical practitioner confirming that he continues treatment; and
4. Enroll in and attend a practice or time management program within one year.

The appellant specifically takes issue with conditions No. 1 and No. 2. He does not dispute the requirements of conditions No. 3 and No. 4.

The following documents and correspondence were submitted to the committee for their consideration:

1. Student A's application for admission as a CPLED student dated June 27, 2006;
2. Certificate of completion of articles completed by Member A, May 17,

- 2007 and filed August 13, 2007;
3. Letter from Dr. Munir A. Pirzada, dated September 7, 2007;
 4. Letter from Brenda Silver to Student A dated November 26, 2007;
 5. Letter from Sheila Redel to Student A dated November 26, 2007;
 6. Letter from Sheila Redel to Member A dated November 26, 2007;
 7. Application and Petition for call and admission filed by Student A on December 6, 2007;
 8. Letter from Sheila Redel to Student A dated December 20, 2007;
 9. Letter from Member A to Sheila Redel dated December 24, 2007 and received January 3, 2008;
 10. Notice of Appeal of Student A received January 2, 2008; and
 11. Response of Student A to letter of Sheila Redel of January 3, 2008, received January 8, 2008.

The Law Society Rule 5-12 sets out the criteria for successful completion of Articles by a student. It states as follows:

- 5-12 An articling student is eligible for call to the bar if he or she has:
- a. completed the term of articles under Rule 5-5(1);
 - b. obtained a satisfactory certification from his or her principal;
 - c. successfully completed the CPLED program or received an exemption under Rule 5-5(3); and
 - d. continues to be of good moral character and a fit and proper person to be called to the bar;
 - e. paid the required fees.

The Law Society Rule 5-14 states as follows:

- 5-14 The chief executive officer and the committee hearing an appeal under Rule 5-28 may refuse to issue a practicing certificate to an applicant for call to the bar or may impose conditions or restrictions on the practicing certificate of the applicant for call to the bar.

The Director, in imposing the conditions, provided the following reasons:

1. Student A's principal had not certified his practical competence to practice law, specifically stating that he needs to be more organized; and
2. Student A had disclosed a condition with an uncertain prognosis, as described in the letter of Dr. Munir Pirzada dated September 7, 2007.

A summary of Student A's grounds for appeal, as set out in his Notice of Appeal would be as follows:

1. Student A had been given no opportunity to respond to his principal's statement in the Completion of Article Certificate;
2. The decision of the Director was made before the principal could respond to her letter of enquiry; and
3. The condition requiring supervision by a lawyer is a discriminatory restriction under The Human Rights Code Section 14(6).

In response to the Notice of Appeal, the Director submits that the onus to obtain a satisfactory certification from his principal is upon the student pursuant to Law Society Rule 5-12(b). The Director also confirmed that Student A received a copy of the certificate of completion of articles in or about May, 2007.

The diagnosis of Student A's condition is that of anxiety neurosis. His main symptoms are poor concentration, disorganized thoughts, and bizarre sensations in his arms and legs. Although he is receiving medication at this time, the prognosis of his condition is unpredictable.

Student A submits that the decision of the director was made before his principal could respond to her letter of enquiry. However, the committee has had the benefit of that letter of response from his principal which provided further evidence as to the effect Student A's condition has upon his ability to practice. He reports that Student A rushed to finish things, resulting in too many errors, that he did not pay enough attention to deadlines, and files assigned to him remained in limbo too often.

Based upon the evidence presented, it is the decision of this committee that Student A does not meet the criteria for successful completion of articles under 5-12 of the Law Society Rules. He has not obtained a satisfactory certification from his principal and he is currently being treated for a condition which may compromise his ability to practice.

The Committee concurs with the conditions imposed by the Director. If these conditions amount to differential treatment based on disability, they are justified on the basis that they are bona fide and reasonable, and failing to impose those conditions would lead to undue hardship to the public, in that people would be unable to rely on Student A's ability to practice safely and competently without those conditions.

It is the responsibility of the Committee, and the Law Society, to impose reasonable and fair conditions when it deems those conditions necessary in the public interest, as it does in this case for the reasons set out above. It is the responsibility of the lawyer to make reasonable compromises to achieve an accommodation. The Committee feels that these practice conditions are reasonable and necessary. The appeal is therefore dismissed.

Jack Cram
Chairperson of the Admissions and Education Committee

Date: February 28, 2008