



Decision No. 20080910

THE LAW SOCIETY OF MANITOBA

In the Matter of: **Member A - Appeal of Admission Decision**

Hearing Date: **September 10, 2008**

Committee Members: **Irene Hamilton (Chair), Dean Scaletta, Karen Clearwater**

DECISION

REASONS FOR DECISION

On August 20, 2008, the Director - Professional Education (“the Director”) of the Law Society of Manitoba (“the LSM”) advised Mr. Member A that he would “*be eligible to commence articles as soon as we receive your certificate of qualification from the National Committee on Accreditation. You cannot commence the CPLED program until your certificate of qualification is received.*”

On September 3, 2008, Member A filed a Notice of Appeal of the admission decision of the Director to postpone his admission as an articling student, and he requested an oral hearing. Mr. Jonathan Kroft, counsel for Member A, requested that, pending a hearing and the decision of the Appeal Panel, Member A be allowed to commence the 2008/09 CPLED program, the first module of which was scheduled to begin on Monday, September 8, 2008.

On Friday, September 5, 2008, the Chair of the Admissions and Education Committee advised Mr. Kroft that Member A would be allowed to commence the CPLED program the following Monday, and he could attend and audit Module 1, but that he would not be entitled to participate in the competency evaluation for the module as he had not yet been admitted as an articling student and would therefore, not actually be enrolled in the CPLED program.

An appeal hearing took place on Wednesday September 10, 2008 before a panel of three members of the Admissions and Education Committee, pursuant to Law Society Rule 5-28.

BACKGROUND

In July, 2007, Member A graduated with a Bachelor of Laws degree from University A in the United Kingdom. He wished to return to Manitoba to practise law and was able to secure an articling position with the Winnipeg firm of Firm A.

Because Member A had obtained his law degree from a foreign law school, he was required to apply to the National Committee on Accreditation (“the NCA”) for a Certificate of Equivalency. The NCA informed Member A that he would be required to pass examinations in constitutional law, administrative law, the law of evidence, family law, the legal profession and professional responsibility, civil procedure, corporations and criminal law.

Member A passed seven of the exams on the first attempt, but failed the evidence exam on his first and second attempts. He rewrote the evidence exam for the third time on the earliest available date, August 11, 2008.

He was subsequently advised by the NCA that the results of that exam may not be available until early November, 2008.

Member A submitted an application to the LSM for admission as an articling student, together with most of the required supporting documentation. Admission as an articling student would entitle him to enroll in the CPLED course and begin serving his articles.

He was advised by the Director that admission as an articling student is governed by LSM Rule 5-4, which states (in part):

Subject to Rule 5-4.1, an applicant for admission as an articling student must:

...

(b) be the recipient of a certificate of equivalency from the National Committee on Accreditation dated not more than 6 years before the date of the application for admission.

HEARING

The oral appeal hearing was convened on Wednesday September 10, 2008. The three-person panel was comprised of Irene Hamilton (Chair), Dean Scaletta and Karen Clearwater. Mr. Jonathan Kroft appeared on behalf of Member A. Ms Kristin Dangerfield appeared on behalf of the LSM.

At the hearing, Member A expressed his concern that if he were not admitted as an articling student and was not able to commence serving his articles until the results of the exam written on August 11, 2008 were received from the NCA, he would be unable to enroll in the CPLED program until September 2009 and would lose a year of his legal career. Counsel for Member A indicated that what was being sought by the appellant in this case was immediate admission as an articling student in Manitoba, with the condition that the admission be revoked if he received a failing grade on the August 11, 2008 exam.

Mr. Kroft advised, and counsel for the LSM accepted as fact, that there was no mechanism, or ability on the part of the student to accelerate the NCA exam-marking process. He asked that Member A be allowed to be enrolled in the CPLED program, subject to the undertaking that he

would immediately, and voluntarily, withdraw from the CPLED program if he failed the evidence exam he had written on August 11, 2008. He also asked that Member A be allowed to immediately commence serving his required period of articles with the law firm of Firm A under the same condition.

Mr. Kroft submitted that the panel had the discretion to allow the appeal and, if appropriate, impose conditions on Member A.

Ms Dangerfield advised that the LSM did not oppose the assertion that the panel had the discretion to allow Member A to be admitted as an articling student, with or without conditions. She noted that he had obtained an articling position, that he had strong connections to Manitoba, and that he had successfully completed seven of the eight courses directed by the NCA.

Ms Dangerfield submitted that the panel should consider certain factors in assessing the merits of whether or not to exercise that discretion. Those factors were:

- the extent to which the requirements of Rule 5-4 that were outstanding in relation to the appellant's application (i.e. Was there one, or were there several?);
- the relative significance of the outstanding requirements;
- the nature of the delay in complying with the requirements, and the expected length of the delay; and
- the risk to the public arising from the outstanding requirements.

In addressing the issue concerning public protection, Ms Dangerfield stated that, from the perspective of the LSM, there was no real risk to the public that would be posed by permitting Member A to enroll and participate in the CPLED program pending the outcome of the exam (expected by November 2008). If Member A failed the exam, he would immediately, and voluntarily, withdraw from the program for the 2008/09 year, failing which, his enrollment would be immediately revoked by the LSM.

She stated, however, that permitting a student to commence articles without NCA accreditation was of greater concern to the LSM. This concern was highlighted by Ms Dangerfield's comments that there are now few restrictions on what services can be provided to the public by an articling student.

Mr. Kroft submitted that there would not be a risk to the public if Member A were allowed to commence his articles without NCA accreditation. He pointed to the fact that Member A's articles would be served under the supervision of a senior, well-respected member of the profession.

The panel proceeded on the basis that it had the requisite discretion to consider the appeal and allow Member A admission as an articling student with conditions, if it felt that its discretion was warranted in the circumstances. This was the position asserted by counsel for Member A, and it was not opposed by the LSM.

Therefore, the panel was required to decide three issues:

1. Would Member A be admitted as an articling student and, if so, on what conditions?
2. Would Member A be permitted to enroll in the 2008/09 CPLED program and, if so, on what conditions?

3. Would Member A be permitted to commence serving the period articles required by Rule 5-5(1), and, if so, on what conditions?

The panel considered all of the factors that counsel for the LSM had outlined in relation to this appeal.

While only one document remains outstanding, it is one which is important and, indeed fundamental, to admission as an articling student.

The panel agreed that Member A had taken all steps that were within his control in order to satisfy the requirements of the LSM.

The panel took into consideration that Member A had written the evidence exam almost four weeks before the commencement of the CPLED program, and that this was his earliest opportunity to do so. The panel also acknowledged that the time frame in which the exam would be graded was beyond Member A's control.

The panel also took into consideration that, because of the manner in which the CPLED program is structured (where subsequent modules build upon learnings from earlier modules), it would not be possible for Member A to enroll in the program in November, and thereafter complete the modules that he would have missed in September and October. If he were not immediately enrolled in the 2008/09 program, he would have to wait for the start of the 2009/10 program. This would delay his Call to the Bar in Manitoba by up to a year (assuming he passed the NCA exam, and successfully completed both the CPLED program and his articles).

The panel considered whether there would be a risk posed to the public if Member A were permitted to enroll and fully participate in the CPLED program prior to receiving notification of his mark from the August 11, 2008 exam. Given Member A's undertaking that he would immediately withdraw from the program if he failed the evidence exam of August 11, 2008, the panel concluded that there would not be any risk to the public posed by Member A being enrolled in the 2008/09 CPLED program.

The panel considered Rule 5-4 and the definition of "articling student". The panel concluded in order to participate in the CPLED program, Member A had to be admitted as an articling student. The panel concluded that there would not be any risk to the public if Member A were admitted as an articling student so that he could be enrolled in the CPLED program.

The panel then considered whether there would be a risk to the public if Member A were allowed to commence serving his articles without receiving the NCA accreditation required by Rule 5-4. On this specific topic, the panel was provided with very able comments from both counsel. However, the panel was particularly persuaded by the comments of Ms Dangerfield concerning the minimal restrictions placed on the types of services an articling student is permitted to perform during his or her articles. This does, with the greatest respect to the comments from counsel for Member A, raise valid concerns for public protection. In the panel's view, public protection is a fundamental responsibility of the LSM. Further, the panel notes that if Member A passed the August 11, 2008 evidence exam, there would be at most a two-month delay in the commencement of serving his articles and a minimal overall delay to the date upon which he could receive his Call to the Bar. As such, the prejudice to Member A is minimal.

Further, the panel, upon considering the public protection aspect, once again looked to the Rule itself, which requires that, in order to commence articles, a student **must** (emphasis ours):

- (a) have a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university or an equivalent qualification.....or
- (b) be the recipient of equivalency from the National Committee on Accreditation...

The panel has concluded that, in order to fulfill the public protection mandate of the LSM, it is necessary that a student serving articles have a Canadian Law degree, or an NCA accreditation certificate. It has determined that it is not appropriate to exercise its discretion to allow Member A to commence serving his articles until the requirement of the Rule has been met.

DECISION

Therefore the panel decided that:

I. Member A will be admitted on a conditional basis as an Articling Student subject to the following:

- 1. That he pass the August 11, 2008 examination required to receive a certificate of equivalency from the National Committee on Accreditation;
- 2. That he provide The Law Society of Manitoba with the examination results as soon as they are available to him;
- 3. That he immediately meets all requirements of Law Society Rule 5-4 (c)-(f) inclusive;
- 4. This conditional admission will be immediately revoked if Member A fails the August 11, 2008 examination.

II. The conditional admission will entitle Member A to enroll and participate in the 2008/09 CPLED program immediately, conditional upon providing The Law Society of Manitoba with satisfactory proof that he has passed the August 11, 2008 examination and is entitled to receive his certificate of qualification from the NCA. If he does not pass, his enrolment will be revoked.

III. Member A will not be entitled to commence serving the articles required by Law Society Rule 5-5(1) until he provides proof satisfactory to The Law Society of Manitoba that he has passed the August 11, 2008 examination and is entitled to receive his certificate of qualification from the NCA.

Irene Hamilton
Chairperson of the Admissions and Education Committee

Date: September 29, 2008