



Decision No. 20090729

THE LAW SOCIETY OF MANITOBA

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

Hearing Date: July 29, 2009

**Panel Members: Karen L. Clearwater (Chairperson)
 John Neufeld, Q.C.
 Paul Grower**

DECISION

1. The Appellant, Student A, (the "Appellant") appeals the decision of the Director of Professional Education and Competence for the Law Society of Manitoba (the "Director") that he failed to successfully complete the CPLED program. The decision of the :Director was based on the Appellant having received a grade of "Competency Not Yet Demonstrated" ("CNYD") on the Supplemental Competency Evaluation for Module 4 of the 2008-2009 CPLED program. Module 4 of the 2008-2009 CPLED program concerned interviewing skills.

2. As a result of receiving a grade of CNYD on Module 4, the Appellant was advised by the Director that he had not successfully completed the CPLED program and would be required to apply for permission to repeat the program in its entirety in 2009-2010. The Appellant did not appeal the grade of CNYD in the circumstances, but rather appealed the decision of the Director. The Appellant requested the Panel exercise its discretion and allow him to repeat only Module 4 of the CPLED program rather than the entire course.

3. At the outset of the hearing, the Appellant, who was representing himself

in the proceedings, waived his right to have counsel appear on his behalf. In addition, the parties confirmed the appeal was being heard pursuant to Rules 5-11 and 5-28 of *The Law Society Rules*, and also to section 7(1) of *The Fair Registration Practices and Regulated Professions Act*. The parties confirmed the Panel was properly constituted and had jurisdiction to deal with the appeal before it.

4. The following documents and correspondence were submitted to the Panel for its consideration in advance of the appeal:

- (a) Notice of Appeal prepared by the Appellant, dated June 17, 2009;
- (b) Letter of Decision from the Director to the Appellant, dated May 11, 2009;
- (c) Cumulative Statement of Grades, provided as an enclosure to the Letter of Decision of May 11, 2009;
- (d) Statement of Deficiencies related to Supplemental Competency Evaluation 4, provided as an enclosure to the Letter of Decision of May 11, 2009;
- (e) Copies of the relevant Law Society Rules (the "Rules") regarding admissions and appeals of admission decisions; and
- (f) Relevant excerpts from the 2008-2009 CPLED Handbook for Students and Principles.

5. Also provided to the Panel at the hearing was a copy of the proposed 2009-2010 Manitoba CPLED Calendar for modules commencing in September 2009 to and including March 2010. This schedule shows the interviewing skills module in 2009-2010 will be Module 5, and will be held in or around November, 2009.

6. The Panel considered the evidence and submissions of the parties in full. After some deliberation, it issued its oral decision to grant the appeal with reasons to follow. These are those reasons.

General Facts

7. The facts in the appeal were not in dispute, As noted above, the Appellant requested that the Panel, in accordance with the discretion provided to it under sections 5-11 and 5-28 of the Rules, allow him to repeat only the Module relating to interviewing skills as opposed to repeating the entire course. The Panel was advised that the Appellant was also required to attend and complete Module 1 of the CPLED program in 2009-2010 which he had not taken in 2008-2009 as a result of a delay in receiving his National Accreditation scores. The parties confirmed matters relating to Module 1 of the CPLED program did not form a part of the appeal given this agreement was the subject of a previous extension granted to the Appellant. The completion of Module 1 would be required independent of our findings in this case.

8. The Panel was provided with a general overview of the CPLED program. The program is broken up into a number of modules. Each module generally consists of one or more assignments and a final evaluation. To pass a module, the learner must receive a grade of "Competency Demonstrated" ("CD") on the final evaluation. These evaluations are referred to as Competency Evaluations.

9. Where a learner receives a grade of CNYD on an assignment, the learner is able to receive feedback and re-do the assignment. There is no apparent maximum number of times a learner may have to redo an assignment in the CPLED program, nor is there a formal statutory requirement that a CD grade must be achieved on an assignment in order to have been found to have successfully completed the module.

10. On the other hand, where a learner receives a grade of CNYD on the final Competency Evaluation in any Module, he or she will be required to do a Supplemental Competency Evaluation at the end of the CPLED course. The learner must receive a grade of CD on the supplemental evaluation in order to have successfully completed the module. Further, to have successfully completed the CPLED program, the learner must have successfully completed all modules.

11. The CPLED program is primarily an online program with the majority of modules being completed entirely in a virtual world. The learners are members of a virtual law firm, provided virtual client files and are required to complete the assignments and evaluations provided to them in relation to those files. The modules are completed by the students with the assistance of Learning Group Facilitators who provide feedback on assignments to the learners in the online forum and grade the submitted work, all without ever having face to face contact with the students.

12. In addition to the online modules, the parties confirmed for the Panel that there are three face to face modules in the CPLED program. These modules require that the students attend to the Law Society of Manitoba (the "ISM"), receive face to face teaching from the Facilitators, and complete practical assignments and competency evaluations in a class room setting. The module relating to interviewing skills, for which the Appellant received the grade of CNYD on the Supplemental Competency Evaluation in this case, falls into this category.

Position of the Appellant

13. Both the Appellant and counsel for the LSM made submissions before the Panel in relation, to the requested relief. The Appellant's written submissions included the filed Notice of Appeal which outlined certain exigent circumstances that he urged the Panel to consider in exercising its discretion in this case. These factors included:

- (a) Significant family issues which ultimately resulted in the break-up of his marriage during the 2008-2009 CPLED year;
- (b) Financial hardship which the Appellant suggested was caused by his having to reduce his work schedule with Handi-Transit in order to complete the course work of the CPLED program;
- (c) CPLED academic challenges; and
- (d) Other compassionate family reasons, particularly his desire to return to his home country of Sudan in the fall of 2009 to visit his elderly mother.

14. In addition to these reasons, the Appellant in his submissions explained to the Panel

that he was a victim of a car accident in or around January of 2009. He sustained serious head, neck and lower back injuries from the accident which required hospitalization. However he did acknowledge that, as a result of the accident and his injuries, he was granted necessary time extensions by the Director for the completion of the CPLED course work which had been ongoing during this time.

15, The Appellant also spent some time in his oral submissions detailing his personal and work history. He advised the Panel that he had practiced law in his home country of Sudan prior to his immigration to Canada. He spoke of the language barriers he faced in completing the required National Accreditation course work and exams particularly given that English was a third language for him. In addition, he highlighted the significant challenges that he faced in learning to utilize a computer proficiently enough to complete the course work for CPLED. Computers were not a tool he had available to him in the past.

16. Other factors outlined by the Appellant, and also by counsel for the LSM, included the fact that he had not been articling at the time he commenced the CPLED program. The Appellant was, in that sense, working on the CPLED program without the benefit of practical experience or advice. It was confirmed for the Panel that the Appellant ultimately commenced his articles at a small firm in rural Manitoba, which articles are due to be completed in or around March of 2010. When asked, the Appellant explained that since commencing his articles he had been provided with practical opportunities to work with his Principal and engage in the client interviewing process. Both parties acknowledged the benefit he would gain from this practical experience.

17. The Appellant confirmed for the Panel that the CPLED program proved to be a significant challenge for him as a result of all of these factors; a challenge which, in his words, he had to work very hard to overcome. The fact of the challenge and his hard work was evident upon a review of the Cumulative Statement of Grades which was provided to the Panel. Despite these challenges, as the Appellant pointed out, he was able to complete all other modules, excepting Module 1 for the reasons outlined above, and achieved a grade of CD in each instance. In all of the circumstances, he urged the Panel to exercise its discretion in his favour and, in so doing, grant his appeal.

Position of the LSM

18. In her response to the submissions of the Appellant, counsel for the LSM confirmed for the Panel that this was the first appeal of this kind heard by such a Panel in Manitoba. She urged the Panel, as a result, to carefully consider under what exigent circumstances it ought to exercise its discretion in accordance with the Rules. She reminded the Panel of the mandate of the Law Society of Manitoba to protect members of the public through, in these circumstances, ensuring members who are admitted to the practice of law will be competent to practice safely. In light of this mandate, she further urged, it may be more appropriate to require the Appellant to repeat the CPLED program in its entirety.

19. In making her submissions, counsel for the LSM, advised the Panel that where a grade of CNYD is received on a Competency Evaluation, and then again on a Supplemental Competency Evaluation, that final result had been marked by at least four (4) separate individuals. The initial CNYD is reviewed by a second Learning Group Facilitator prior to advising the individual of the result. Similarly, if CNYD is the result of the supplemental competency evaluation, that mark is also reconsidered by a second independent marker prior to advising the learner of the result. In other words, she advised, in this case the determination of CNYD was considered at least four (4) times. As such, counsel for the LSM submitted that yet another "kick at the can" so to speak, should only be provided in very unique circumstances.

In considering whether the necessary exigent circumstances existed in this case, counsel for the LSM reviewed all of the factors. She acknowledged the difficulties that this particular Appellant had overcome in not only enrolling in the program, but also in dealing with significantly difficult circumstances throughout the year as outlined in the Appellant's submissions, Counsel for the LSM accepted that these unique personal circumstances are circumstances that ought to be considered in such a case. However, she urged that the personal challenges alone ought not be the determining factor. To the contrary, she submits, many students and practitioners face personal challenges throughout their lives and careers and while those challenges may be relevant in some circumstances, it is the protection of the public interest in ensuring competent counsel which must be given paramount consideration.

21. In assessing what is in the best interests of the public, counsel for the LSM suggested a review of the evidence on the Cumulative Statement of Grades ought to carry a great deal of weight. That evidence, counsel submits, shows a pattern of difficulties for this learner. There are a number of CNYD results on assignments and on more than one competency evaluations. These types of results she submits, supports the suggestion that the public, and the Appellant would be better served by repeating the program in its entirety.

22. Also provided to the Panel as evidence, was the Supplemental Competency Evaluation Statement of Deficiencies which was provided to the Appellant upon completing the Supplemental Competency Evaluation for the interviewing skills module. This evidence showed generally the areas in the module that remained a challenge to the Appellant at the time he took the supplemental examination. In reviewing this evidence, counsel for the LSM reminded the Panel that, at the time the Appellant was registered in the 2008-2009 CPLED program, he was not participating in articles. As a result, she submits, given his current articles will provide him simultaneous practical experience and potentially create an easier atmosphere for completing the modules, repeating the program in its entirety may be beneficial to him and to the public.-interest.

Decision

23. Part 5 of the Rules deals with the requirements for both being admitted to the CPLED program, and being admitted to the practice of law. Article 5-5(1) provides:

Every articling student must successfully complete the CPLED Program within two years from the date of commencement of either the CPLED Program or the student's articles, whichever is commenced earlier, and every articling student must serve, unless abridged by the Chief Executive Officer,

(a) at least fifty-two weeks of full time articles; or

(b) part time articles which are equivalent to fifty-two weeks of full time articles, as approved by the Chief Executive Officer.

Rule 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.

24. Rules 5-11 and 5-28 provide the students with the right of appeal either from a finding of a grade of CNYD on a Supplemental Competency Evaluation, or from a decision of the Chief Executive Officer made pursuant to the Rules. It is under these sections that the Appellant has requested an appeal of the Director that he must apply to repeat the whole of the CPLED program in the 2009-2010 year.

25. Firstly, in considering the decision before it, the Panel confirms the position of the LSM that it must consider the protection of the public as the foremost factor in any exercise of its discretion. However, in considering what is in the best interests of the public, it is incumbent upon the Panel to be mindful of all of the extrinsic factors and to ensure the decision is based on fair, reasonable and justifiable grounds in each unique case. The question to be asked is whether, in light of all of the circumstances, the public would be better served by requiring the Appellant to repeat the CPLED program in its entirety.

26. In specific response to the submission of counsel for the LSM that the Appellant would benefit from the completion of the CPLED program while articling, while the Panel recognizes there may be some value to the student in articling at the same time as participating in the CPLED program, the Panel noted that the Rules of the LSM specifically allow for a student to complete the CPLED program prior to the commencement of any articles. Therefore, in light of the Rules, the Panel felt restrained from finding that the Appellant ought to be required to repeat the CPLED program in order to gain the benefit of doing so while articling. Furthermore, as the Appellant was now articling, the Panel was of the view that the additional benefits articulated by counsel for the LSM would be available to the Appellant when he repeated the module in issue.

27. In making its determination, the Panel did consider the entirety of the evidence and the uniqueness of the circumstances before it. Although this list is in no way exhaustive, as each case must be considered on its own facts, the following factors were considered-by the Panel as relevant to its decision in this case to grant the appeal:

- (a) The Appellant, although he was required to complete some supplemental assignment work and supplemental competency evaluations as shown on the Cumulative Statement of Grades, was able to successfully achieve a grade of CD in all but one module (with the exception of the first module which he was still scheduled to take in accordance with an agreement between the parties);
- (b) The Appellant had very little previous exposure to computer work prior to commencing the CPLED program;
- (c) English, the language of instruction in this case, was the Appellant's second or third language;
- (d) The Appellant had practiced law for some period of time in his home country of Sudan prior to immigrating to Canada; and
- (e) The Appellant suffered significant personal stressors over the course of the CPLED year including financial stress, a marital and family breakdown and serious physical injuries.

28. In considering these factors, the Panel wishes to be clear, it agrees with the submissions of the LSM that personal stressors such as financial stress, marital breakdowns or personal injuries will not each on its own be sufficient to justify the exercise of discretion in similar cases. It goes without saying that many students and lawyers alike face these types of challenges on a relatively regular basis and must persevere in the face of them, and continue to honour the interests of the public despite them. However, these are factors which, we determined, must be considered in combination with each other, and in light of all of the other factors facing the Appellant in this case.

29. In this regard, it was the unanimous finding of the Panel that the Appellant, in meeting his personal stressors, and in facing the other challenges he faced in successfully completing all but one module in the CPLED program, at all times displayed the upmost integrity and determination. The Appellant's sincerity in his

requests and in his desire to meet the standards of a practicing member of the profession was very apparent. As a result of all of these factors, the Panel was compelled to exercise its discretion in this case and grant the appeal.

30. The Panel confirmed that the Appellant would be required to successfully complete Module 1 in September of 2009 as had previously been planned. Further, the Panel directed that the Appellant be entitled to repeat the entirety of the module relating to interviewing skills, which would be Module 5 of the 2009-2010 CPLED program. The Appellant, presuming he receives a grade of CD in both modules, would not be required to repeat the 2009-2010 CPLED program in its entirety.

31. The Panel would like to thank both counsel for the LSM, and the Appellant for the very able assistance they provided in consideration of this matter.

February 5, 2010