



Decision No. 20090826A

THE LAW SOCIETY OF MANITOBA

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

Hearing Date: **August 26 & 27, 2009**

Panel: **James E. McLandress – Chair**
Linda Brazier Lamoureux
Mark Toews

DECISION

Re Interim Motion in Respect of August 18, 2009 CPLED Decision

REASONS FOR DECISION

1. Applicant A (the "Appellant" or "Applicant A") has appealed two decisions of the Law Society of Manitoba (the "Law Society"). The first appeal is from an August 10, 2009 decision of the Director of Admissions & Membership for the Law Society (the "Director") rejecting his application for admission to the Manitoba CPLED Program and as an articling student for 2008-09 (the "Admissions Decision"). The second appeal is from an August 18, 2009 decision of the Director rejecting his request for immediate, without prejudice, enrolment in the 2009-10 CPLED Program pending completion of any appeals in respect of the Admissions Decision (the "CPLED Decision").

2. In addition, on August 21, 2009 the Appellant filed three motions with the Panel and during the course of the hearing brought three more.

3. The appeals and motions were all heard on the afternoons of August 26th and 27th, 2009. Applicant A was unrepresented. Ms. Darcia Senft appeared on behalf of the Law Society. The parties proceeded on the basis of their written materials and oral submissions; no witnesses were called and no sworn testimony was presented.

4. All but one of the six motions was dismissed during the hearing. At the conclusion of the hearing the Panel reserved its decision on the two appeals. The sixth and final motion is disposed of in this decision.

5. In this motion the Appellant seeks the following relief:

"An interim order requiring the Law Society to immediately enroll the Appellant, as he suggested in his appeal, in the coming 2009-10 CPLED Program, on a without prejudice basis and pending a completion of all different appeal proceedings regarding his application."

6. According to information provided in the CPLED Decision a prospective student could commence the 2009-10 CPLED Program on either August 31, 2009 (the start date of the program) or on September 8, 2009 (the commencement of Module 2 of the program). These timelines introduce a measure of urgency to addressing this motion.

7. The Panel has carefully considered the parties' submissions and the respective interests that are at stake. The tight timeframe imposed on this motion by virtue of the impending September 8th deadline for commencement of the CPLED program and the implications for the Appellant in the event that the Panel dismisses the motion are also a serious consideration. In particular, if the Panel dismisses the Appellant's motion he will effectively be unable to commence the CPLED Program until next year. Obviously, that is time which could never be recovered; the harm would in that sense, be irreparable.

8. However, for the Appellant to succeed on this motion he would also at least have to convince the Panel that he has a reasonable prospect of success on his appeal of the Admissions & CPLED Decisions. He has not done so.

9. The issue underlying this motion - and the appeals --- is whether the Appellant is "of good moral character and a fit and proper person to be admitted."
[Law Society Rules 5-4(c)]

10. The law in this area is clear; the proper focus is on current character and fitness. Past character & fitness are instructive but not necessarily determinative. Future, potential character & fitness are ultimately irrelevant. What matters is the present state of affairs.

11. The Rules are also clear that under the circumstances of this case the burden is on the Appellant to establish that he is of good moral character and fit to be admitted. After some seven hours of hearings and extensive written submissions the Panel has had abundant evidence from which it can assess Applicant's present character and fitness. The Panel is unanimous in concluding that the Appellant is not currently of good moral character and a fit and proper

12. The interim motion is dismissed.

James E. McLandress, Chair
September 2, 2009