



Decision No. 20100604

THE LAW SOCIETY OF MANITOBA

In the Matter of: **Student A, Articling Student-at-law**
Appeal to the Admissions and Education
Committee of the Denial of an Application to
Abridge Articles

Panel: **Ted Bock (Chair), Peter Cole and Sacha Paul**

Hearing Date: **June, 4, 2010**

DECISION

REASONS FOR DECISION

I. Introduction

On March 31, 2010 Student A applied for an abridgment of articles pursuant to Law Society Rule 5-5(1) on the grounds that her application was based on “exceptional circumstances” within the meaning of that rule.

Student A commenced her articles on November 19, 2009. She requested a 20 week abridgment which, if granted, would result in her being called to the bar on June 17, 2010.

By letter dated May 7, 2010 the Director of Admissions and Membership (the “Director”) informed Student A that her request for an abridgment had been refused.

On May 13, 2010 Student A filed a notice of appeal of the Director's decision pursuant to Law Society Rule 5-28(1). The hearing of that appeal took place on June 4, 2010. Following the hearing, the Panel indicated that Student A's appeal was allowed, and that written reasons would be provided.

II. Relevant legislation and Panel's jurisdiction

Relevant excerpts of *The Legal Profession Act*, C.C.S.M. c. L107 (the "Act") and the *Law Society Rules* (the "Rules") are appended to these reasons for decision.

For our immediate purposes, the following summary is sufficient. The purpose of the Law Society "is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence" (s. 3(1) of the Act). In pursuing its purpose the Law Society must establish, among other things, education standards (s. 3(2)(a) of the Act). The Benchers govern the Society and manage its affairs (s. 4(2)), and the Benchers may make rules for that purpose.

In furtherance of these objects the Benchers made Rule 5-12, which sets out the criteria for eligibility for call to the bar. The first criterion listed is the completion of the term of articles under Rule 5-5(1). Rule 5-5(1) is at the heart of this appeal. It provides as follows:

Articling and CPLED program

5-5(1) Every articling student must successfully complete the CPLED program within 2 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 52 weeks of full-time articles; or

(b) part-time articles which are equivalent to 52 weeks of full-time articles, as approved by the chief executive officer.

Abridgments of more than four weeks may only be granted in exceptional circumstances.

Applications for abridgment of articles are made at first instance to the Director. Where an application for abridgment has been refused, the unsuccessful applicant has the right to appeal that decision to a panel of the Admissions and Education Committee under Rule 5-28. That panel has the jurisdiction to substitute its own decision for the Director's decision; that is, the Panel has the jurisdiction to consider the matter afresh and come to a decision that it considers to be correct.

III. The Facts

The facts were largely uncontested. The real contest was whether or not those facts constituted “exceptional circumstances” within the meaning of Rule 5-5(1). For that reason, it is important that they be reviewed in some detail.

Student A is a Nigerian emigrant. She arrived in Canada in April 2007. From 1994 to 2007 she practiced law in Nigeria, a common law country. Her professional background there was varied, the Panel learned. She spent the first year of her career as in-house counsel with the Nigerian Telecommunications Company. From 1995 to 2000 she carried on a private practice as a sole practitioner. Her practice comprised both solicitor’s and barrister’s work. Finally, from January 2000 to March 2007 Student A was employed as state counsel for the Ministry of Justice in the Civil Litigation and Advisory Services Department, working primarily in the areas of civil litigation, property law and public law. There was no suggestion that Student A had ever been the subject of disciplinary proceedings during her years of practice in Nigeria. Indeed, the material submitted by her from her previous employers suggests that she practiced with distinction.

As noted earlier, Student A emigrated to Canada in April 2007. Her employment and educational experience in Canada are also relevant to her appeal. From May to December 2007 Student A was employed by the Manitoba Human Rights Commission as a legal researcher. From February to August 2008 Student A was employed as an investigator by the Manitoba Human Rights Commission. In March and April 2009 she assisted David Matas, a well-known Winnipeg immigration and human rights lawyer, in his practice. Among other things, she assisted him in preparing for and attending at hearings of the Immigration and Refugee Protection Board.

In the meantime, Student A had decided to take steps to become a lawyer in Manitoba. To that end, she applied to the National Committee for Accreditation (the “NCA”) for an assessment of her credentials. The NCA determined that there were eight areas in which Student A required further study in order to obtain a certificate of equivalency: criminal law, remedies, constitutional law, administrative law, corporate law, evidence, tax law and professional responsibility. In August 2008 Student A challenged the NCA’s criminal law exam and passed it. In the 2008 – 2009 academic year she completed five courses at the University of Manitoba Law School: Remedies, Constitutional Law, Administrative Law, Corporate Law and Evidence. In August 2009 Student A challenged the NCA’s tax law and professional responsibility exams. In November 2009 she was informed by the NCA that she had passed both exams. At that point, she had satisfied the NCA’s requirements for the issuance of a certificate of equivalency.

Student A applied for admission as an articling student and to the 2009 – 2010 Manitoba CPLED program. By letter dated June 16, 2009 Student A was informed by the Director that she had been admitted on three conditions:

1. that she pass the NCA's tax law and professional responsibility exams in August 2009;
2. that she provide The Law Society with the examination results as soon as they were available to her;
3. that her conditional admission would be immediately revoked if she failed to pass either of the August 2009 examinations.

On that basis Student A was entitled to enroll and participate in the 2009/10 CPLED program, which she did. By the time of her appeal hearing before this Panel, she had successfully completed the CPLED program.

The Director warned Student A in that same letter of June 16, 2009 that she would not be entitled to commence serving the articles required by Law Society Rule 5-5(1) until she had provided proof satisfactory to the Law Society that she had passed her NCA examinations in August. The Law Society and Student A agree that this condition was satisfied, and that her articles commenced, on November 19, 2009.

Student A commenced employment with Manitoba Public Insurance in its law department on June 29, 2009. A letter from Michael Triggs, Director of Legal Services for Manitoba Public Insurance, was filed in support of Student A's appeal. (The Panel was advised that Mr. Scaletta, Student A's principal, was out of the country at the time of her appeal. Mr. Triggs therefore wrote on his behalf.) According to Mr. Triggs, from "June 29 to November 19, [2009] Manitoba Public Insurance employed Student A as per the conditions set in the Law Society's June 16, 2009 letter. During this time, as a conditional Articling Student, she participated in the agreed to Education Plan for her articles." This was confirmed by Student A at the appeal hearing. She explained that the nature of the work she was doing for Manitoba Public Insurance before November 19, 2009 was substantially the same after that date. The only exception to this was that after November 19, 2009 Student A, now an articling student, was entitled to appear in court and make submissions, which she did.

Student A's application for abridgment of articles was filed on March 31, 2010. The application includes a "Certification of Principal" completed by Student A's principal, Dean Scaletta. (By coincidence, at the time Mr. Scaletta was a member of the Law Society's Admissions and Education Committee.) Mr. Scaletta acknowledged that he had reviewed Student A's application for abridgment in conjunction with the Education Plan and certified that Student A would have "substantially completed the articling experience within the abridged time", that is, between November 19, 2009 and June 17, 2010. As regards the Education Plan, it was originally submitted in August 2009 but not approved until

November 2009, after Student A had received word from NCA that she had passed her last two exams.

By letter dated May 7, 2010 the Director informed Student A that her application for abridgment had been rejected. In his reasons the Director considered, among other things, whether Student A's circumstances were "exceptional" and the length of time – 20 weeks – by which Student A sought to abridge her articles. On both counts he found her application wanting.

On May 13, 2010 Student A filed her notice of appeal. The Director didn't have the benefit of certain additional information filed with that notice of appeal. This included Mr. Triggs's letter of May 12, 2010 mentioned earlier, as well as a joint letter of support from Dianna Scarth and Sarah Lugtig, both counsel with Student A's former employer, the Manitoba Human Rights Commission, and a letter of support from Rocky Kravetsky, also a Winnipeg lawyer.

IV. The issue

The issue before the Panel was simply this: Rule 5-5(1) provides that abridgments of more than four weeks may only be granted in "exceptional circumstances". Did Student A discharge that burden on this appeal?

V. Discussion

Rule 5-5(1) clearly expresses the Benchers' view that to be eligible for their call to the bar and admission to the profession students must satisfy two criteria, one academic and the other practical. The academic component is the CPLED program; the practical component is the articling program.

The text *Barristers & Solicitors in Practice* (LexisNexis Canada Inc. 2009) describes articling in these terms (at §2.16):

All law societies require applicants for admission to spend a period of service with a practicing lawyer, known as an articling principal, as part of the pre-call training requirements. Traditionally referred to as articling, the training is designed to provide experience in the day-to-day tasks of a lawyer. This involves the acquisition of legal practice skills, and learning to apply, in a practical way, the knowledge acquired during law school relating to substantive law and professionalism. [footnote omitted]

The importance of the articling period to the development of a qualified lawyer is obvious. Under our Rules it affords every student not only the opportunity but the obligation to be exposed to, and become familiar with, various important aspects

of the practice of law. The Rules call for an articling period of not less than 52 full-time weeks. That standard reflects the fact that in order to be effective, the articling process takes time.

As a result, Rule 5-5(1) recognizes that an abridgment of the 52 week articling period should only be permitted in “exceptional circumstances”. While every case will turn on its own facts, there are two factors that ought to be considered in every case:

- (a) the Law Society’s purpose, which is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence. As a result, it is the public’s interest that should be given weight over the personal circumstances of the applicant for an abridgment;
- (b) given that the purpose of the articling program is to ensure that articling student receives a certain minimum standard of practical experience before her call to the bar, the applicant’s relevant legal experience should be carefully considered, particularly the experience gained during the applicant’s articles and any experience gained during the period sought to be abridged.

With that in mind, the Panel turned to consider the circumstances of Student A’s appeal, and whether they were “exceptional”.

At the outset, the Panel concluded that whatever Student A’s circumstances, the public interest demanded that she be no less qualified than any other articling student who had completed the standard 52 week articling period. Student A obviously has a personal interest in abridging her articles and moving forward with her career as soon as possible, and she spoke briefly to that point in the course of her submission. While the Panel was sympathetic to Student A’s personal interests, they weren’t relevant to the Panel’s ultimate decision.

The Panel turned to consider Student A’s experience, and whether in the circumstances it was comparable to the experience that she would have gained had she completed a standard 52 week articling period. The Panel concluded that Student A’s appeal ought to be allowed. In arriving at that decision, it was influenced by the following:

- (a) Student A had been a practicing lawyer for 13 years in Nigeria, a common law jurisdiction, and her practice there had only ended three years earlier;
- (b) Student A had successfully completed the academic component of Rule 5-5(1);
- (c) prior to her articles Student A had had the benefit of some practical legal experience in Manitoba as a result of her employment at the

Manitoba Human Rights Commission and her experience with Mr. Matas;

- (d) members of the profession with whom Student A had had dealings, and who had had an opportunity to assess Student A's experience and qualifications, were supportive of her appeal;
- (e) Student A didn't intentionally arrange her NCA examinations in August 2009 with a view to avoiding any part of the 52 week articling period;
- (f) during the 20 week period of her articles that Student A sought to have abridged she was performing substantially the same work that she did during the 32 weeks that she was formally an articling student. The only exception was that until the formal commencement of her articles on November 19, 2009 Student A did not appear in court and make submissions. That gap in her experience, however, is filled by her prior professional experience. In addition, at the appeal hearing the Panel had the opportunity to witness Student A make a very able legal submission on her own behalf that demonstrated her competence in this area; and
- (g) from the time she started working at MPI in June 2009, Student A had been actively participating in her Education Plan under the supervision of an approved principal, Dean Scaletta. By chance, Mr. Scaletta was at the same time a member of the Admissions and Education Committee. In completing the Certification of Principal Mr. Scaletta, as a member of that committee, would have been especially aware of the need to ensure that Student A's articling experience was comparable to that of any other articling student who had completed the standard 52 week articling program.

The Panel was mindful of the fact that Student A was seeking to abridge her articles by a substantial period of time, representing almost 40% of the total period required by the Rules. Although the length of the abridgment is a relevant and important factor that should be considered in every case, in the very unusual circumstances of this case it amounted to little more than form over substance.

Decision

The Panel was unanimous in its decision to allow the appeal. Student A's application for the abridgment of her articles is therefore granted.

Ted Bock

Chairperson of the Admissions and Education Appeal Panel

C.C.S.M. c. L107
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.

Benchers' mandate and powers

4(2) The benchers shall govern the society and manage its affairs, and may take any action consistent with this Act that they consider necessary for the promotion, protection, interest or welfare of the society.

General power to make rules

4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.

Rules are binding

4(6) The rules are binding on the society, the benchers, the members and everyone who practises or seeks the right to practise law under the authority of this Act, other than Part 5 (representation in highway traffic matters).

Authority to practise law

20(1) Subject to any restrictions imposed by or under this Act, a practising lawyer may practise law in Manitoba.

Unauthorized practice of law

20(2) Except as permitted by or under this Act or another Act, no person shall

- (a) carry on the practice of law;
- (b) appear as a lawyer before any court or before a justice of the peace;
- (c) sue out any writ or process or solicit, commence, carry on or defend any action or proceeding before a court; or
- (d) attempt to do any of the things mentioned in clauses (a) to (c).

Activities deemed to be carrying on the practice of law

20(3) A person who does any of the following, directly or indirectly, for or in the expectation of a fee or reward is deemed to be carrying on the practice of law:

- (a) draws, revises or settles any of the following documents:
 - (i) a document relating to real or personal property,
 - (ii) a document for use in a proceeding, whether judicial or extra-judicial,
 - (iii) a document relating to the incorporation, administration, organization, reorganization, dissolution or winding-up of a corporation,

- (iv) a will, deed, settlement, trust deed or power of attorney, or any document relating to the guardianship or estate of a person,
 - (v) a document relating to proceedings under any statute of Canada or of Manitoba;
- (b) negotiates or solicits the right to negotiate for the settlement of, or settles, a claim for loss or damage founded in tort;
- (c) agrees to provide the services of a practising lawyer to any person, unless the agreement is part of, or is made under
- (i) a prepaid legal services plan,
 - (ii) a liability insurance policy, or
 - (iii) a collective agreement or collective bargaining relationship;
- (d) gives legal advice.

Exceptions

20(4) Subsection (2) does not apply to the following:

- (a) a public officer acting within the scope of his or her authority as a public officer;
- (b) a notary public exercising his or her powers as a notary public;
- (c) a person preparing a document for his or her own use or to which he or she is a party;
- (d) a person acting on his or her own behalf in an action or a proceeding;
- (e) an officer or employee of an incorporated or unincorporated organization preparing a document for the use of the organization or to which it is a party.

S.M. 2008, c. 27, s. 3.

Practice by students

21 The benchers may make rules permitting and regulating the practice of law by students.

LAW SOCIETY RULES

Part 5 Protection of the Public

Division 1 – Admissions

Definitions

5-1 In this part,

"articling student" means a person enrolled in the society's bar admission program and registered in the student register as an articling student; (ENACTED 05/07)

"bar admission program" means the society's pre-call licensing program; (ENACTED 04/04)

"committee" means the admissions and education committee;

"CPLED program" means the Canadian Centre for Professional Legal Education program that operates as the society's bar admission program; (ENACTED 04/04)

"law student" means a person enrolled in a law degree program and registered in the society's student register as a law student; (ENACTED 05/07)

"principal" means a practising lawyer who has been approved to enter into an articling agreement with an articling student.

Committee objectives

5-2 The role of the committee is to:

- (a) advise the benchers on policies relating to admissions and education issues;
- (b) consider appeals of grades and admissions decisions made pursuant to the rules in this division and conduct hearings as required; and
- (c) take any steps and delegate any authority necessary for the committee to carry out its responsibilities.

(A.M. 05/07; A.M. 10/07)

Participation of dean

5-3 The benchers must appoint the Dean of the Faculty of Law at the University of Manitoba to sit as a committee member. (A.M. 05/07)

Admission of Articling Students

Application for admission as an articling student

5-4 Subject to rule 5-4.1, an applicant for admission as an articling student must, by May 31 in the calendar year in which articles commence:

- (a) provide proof that he or she has a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university (a “Canadian common law degree”) or an equivalent qualification, dated not more than 6 years before the date of the application for admission; or
- (b) provide proof that he or she is 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;
and must
- (c) provide proof that he or she is of good moral character and a fit and proper person to be admitted;
- (d) enter into an articling agreement with a practising lawyer who has been approved by the chief executive officer to act as a principal and submit an acceptable Education Plan; (ENACTED 05/07)
- (e) furnish all documentation required by the chief executive officer; and
- (f) pay the student admission fee under subsection 19(1) of the Act.
(A.M. 06/03; 04/04; 12/05; 05/07; 10/07; 10/08)

Exception

5-4.1 An applicant for admission as an articling student who is the recipient of a “Canadian common law degree”, equivalent qualification, or a certificate of equivalency from the National Committee on Accreditation, dated more than 6 years before the date of the application, must apply to the society for permission to be admitted as an articling student and the chief executive officer may refuse the application or grant the application, with or without conditions.
(ENACTED 12/05) (A.M. 05/07; 10/07)

Failure to file admissions documents by deadline

5-4.2 If an applicant for admission as an articling student does not file the required documents by the deadline set out in rule 5-4 or any extended deadline authorized by the chief executive officer, the length of articles to be served under rule 5-5(1) shall be increased by one week for each week the filing of documents has been delayed. The chief executive officer may extend the deadline for filing documents under this rule only in exceptional circumstances.
(ENACTED 10/08)

Joint responsibility of articling student and principal to file articling agreement

5-4.2.1 An applicant for admission as an articling student and the applicant's principal must enter into a written articling agreement and are jointly responsible for filing with the society the signed agreement, together with an acceptable education plan and such further documentation as required by the chief executive officer, within two weeks of the commencement of articles.
(ENACTED 10/08)

Failure to file articling agreement by deadline

5-4.3 If an applicant for admission as an articling student and the applicant's principal fail to file all the documents required under rule 5-4.3 by the required deadline or any extended deadline authorized by the chief executive officer, the length of articles to be served under rule 5-5(1) shall be increased by one week for each week the filing of documents has been delayed. The chief executive officer may extend the deadline for filing documents under this rule only in exceptional circumstances.
(ENACTED 10/08)

Articling and CPLED program

5-5(1) Every articling student must successfully complete the CPLED program within 2 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 52 weeks of full-time articles; or
- (b) part-time articles which are equivalent to 52 weeks of full-time articles, as approved by the chief executive officer.

Abridgments of more than four weeks may only be granted in exceptional circumstances.

(A.M. 04/04; 05/07; 10/08)

Credit for articles in another jurisdiction

5-5(2) In determining the period of time that a student has served articles in Manitoba, the student may be credited, to a maximum of six months, for all the time served by the student articling or clerking in another Canadian jurisdiction. (A.M. 05/07; 10/08)

Exemption from bar admission program

5-5(3) The chief executive officer may allow an articling student who has completed the bar admission program of another Canadian jurisdiction to complete qualification assessments or examinations in lieu of completing all or a portion of the bar admission program in Manitoba. (A.M. 04/04; 05/07; 10/07; 10/08)

Practice by articling students

5-7.1 An articling student may practise law pursuant to section 21 of the Act in accordance with the terms of the Education Plan and Articling Agreement entered into between the articling student and his or her principal. (ENACTED 05/07)

Responsibility of principal

5-7.2 The principal of an articling student must comply with the terms of the Articling Agreement. (ENACTED 05/07)

Criteria for successful completion

5-12 An articling student is eligible for call to the bar if he or she:

- (a) has completed the term of articles under rule 5-5(1);

- (b) has obtained a satisfactory certification from his or her principal;
- (c) has successfully completed the CPLED program or received an exemption under rule 5-5(3);
- (d) continues to be of good moral character and a fit and proper person to be called to the bar; and
- (e) has paid the required fees.
(A.M. 04/04; 05/07; 10/07)

Appeal of admissions decisions

5-28(1) Subject to subsection (8), a decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee within 14 days of receipt of written confirmation of the decision and the right to appeal. (ENACTED 10/07) (AM. 04/10)

Chairperson to appoint panel

5-28(2) The chairperson of the committee must select a panel of three members of the committee to consider any appeal made under subsection (1). (ENACTED 10/07) (AM. 05/08)

Hearings

5-28(3) A panel must convene an oral hearing to consider an appeal at the direction of the chairperson or at the request of an appellant. (ENACTED 05/08)

Hearing to be public

5-28(4) An oral hearing convened under sub-section (3) must be open to the public unless the panel makes an order under sub-section (5). (ENACTED 06/09)

Exclusion of members of public

5-28(5) A panel considering an appeal under sub-section (3) may make an order excluding members of the public from a hearing if it thinks that:

- (a) exclusion is necessary to prevent the disclosure of information that is subject to solicitor-client privilege; or
- (b) the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.
(ENACTED 06/09)

How and when order can be made

5-28(6) A panel may make an order under sub-section (5) on its own motion, or on the application of any person having an interest in the information to be disclosed. The order or application may be made before the hearing begins or at any time during the hearing. (ENACTED 06/09)

Decision of panel final

5-28(7) A decision of the panel is final, except a decision to refuse to issue a practising certificate or a practising certificate free of conditions, which decision may be appealed to the Court of Appeal pursuant to section 76 of the Act. (ENACTED 05/08; AM. 06/09)