



Decision No. 20110531

## THE LAW SOCIETY OF MANITOBA

**In the Matter of:**                    **Applicant A**  
**Appeal to the Chair of the Admissions and**  
**Education Committee under Rule 5-28(8) of**  
**Admission Decision**

**Date of Decision:**                **July 6, 2011**

### DECISION

#### Introduction

Applicant A wishes to apply for admission to the CPLED Program for the 2011-2012 term. He has applied for admission to the CPLED Program before. His last application for admission to the CPLED Program was denied by the Appeal Panel on September 21, 2010. Rule 5-28.1(2) of the *Law Society Rules*, however, stands in the way of Applicant A's current wish to re-apply. (Rules referred to in this decision are appended hereto.) That rule prevents him from re-applying for admission for a period of two years after the date of the Appeal Panel's decision, or September 21, 2012. Applicant A seeks the relief from that rule provided by Rule 5-28.1(3), which provides that the chief executive officer may grant an abridgment of the two year waiting period if he "is satisfied that there has been a material change in the person's circumstances." Applicant A's request for an abridgment was denied by the Director of Admissions & Membership. He now appeals that decision to the Chair of the Admissions and Education Committee pursuant to Rule 5-28(8).

#### Documents considered on appeal

The following documents have been submitted for my consideration on this appeal: Applicant A's original application for abridgment dated April 14, 2011,

the written decision of the Director of Admissions & Membership dated May 17, 2011, and Applicant A's written appeal of that decision dated May 30, 2011.

### **The Decision of the Director of Admissions & Education**

The Director's decision reviewed the background to Applicant A's current request for an abridgment, and also reviewed the basis for Applicant A's request. He noted that the Appeal Panel had denied Applicant A's application for admission to the CPLED Program and as an articling student on September 21, 2010. Written reasons followed, dated November 25, 2010, denying Applicant A's appeal on the basis that he had failed to rebut the presumption that he was not of good character and a fit and proper person to be admitted.

The Director then identified the issue that was before him:

I believe it is important to clarify that the issue to be determined by me regarding your request is not whether you now meet the good character and fitness to practice requirement. Rather, the issue to be decided is whether you have satisfied the requirement that there has been a **material change** in your circumstances such that two year waiting period should be abridged.

The Director articulated the test that he applied in considering Applicant A's appeal:

Please note that Rule 5-28.1(3) requires not merely a change in your circumstances but changes that are "material". I have interpreted "material change" to mean that the change must be important and go to the merits of the issue at hand. Accordingly, in order to satisfy this requirement you must demonstrate changes which are important and which reflect a change in your circumstances such that it bears upon the issue of your character and fitness to practice law.

Following that review, the Director considered in detail each of the eight items listed in Applicant A's request in order to answer:

- (a) whether that item constituted a change in Applicant A's circumstances; and
- (b) if so, whether the change evidenced a "material" change in Applicant A's circumstances.

Of the eight items raised by Applicant A, the Director identified three "changes": Applicant A's Canadian citizenship, his decision not to seek judicial review of the Appeal Panel's decision of November 25, 2010 and his advice that he continued to have ongoing unsupervised access to his two children. When the Director turned to consider whether any of those three changes were "material" to

Applicant A's character and fitness to practice law, he concluded that they were not.

The Director also noted that Applicant A's request for an abridgment had come only seven months after the Appeal Panel's decision. In effect, Applicant A was seeking a 17 month abridgment of the 24 month waiting period. The Director ruled that this increased the burden on Applicant A to show that there had been a material change in his circumstances since the Appeal Panel's disposition of the matter.

The Director concluded that Applicant A hadn't met the burden placed on him by Rule 5-28.1(3). His request for an abridgment was accordingly denied.

### **Standard of review**

Applicant A's appeal didn't include any submissions on the appropriate standard of review on this appeal. The Rules themselves are silent on the point. The decision of the Chair is stated in Rule 5-28(8) to be final.

In the circumstances, mindful of the importance of this process to Applicant A, I have considered not only whether the Director's decision was reasonable, but whether it was correct.

### **Assessment of the Director's decision**

In my view, the Director accurately and fairly assessed each of the items raised by Applicant A in support of his request for an abridgment. He identified and applied the appropriate test to Applicant A's request, and correctly concluded that there had been no "material change" in Applicant A's circumstances relevant to his character and fitness to practice law between September 12, 2010 (the date of the Appeal Panel's decision) and April 14, 2011 (the date of his request for an abridgment). I conclude that the Director's decision was not only reasonable, but correct.

That does not end the matter, however. Applicant A raised a number of issues on his appeal. I turn now to consider each of them, more or less in the order in which Applicant A raised them.

### **Items raised by Applicant A on appeal**

#### **1. The Chief Executive Officer's delegation of the request for abridgment to the Director (Item no. 1)**

Applicant A challenges the Director's decision on the basis that the matter was improperly delegated to him by the Chief Executive Officer. Section 12(3) of *The Legal Profession Act* C.C.S.M. c. L107 (appended) is a complete answer to that

challenge. It provides that the chief executive officer may delegate to one or more employees of the society any of his powers, duties or functions.

## **2. Bias (Item no. 2)**

Applicant A challenges the Director's decision on the basis that he was biased. In particular, he points to the fact that Mr. Porcher, who now holds the position of Director of Admissions & Membership, happens to have been the Law Society employee who made the decision to deny Applicant A's original application for admission to the CPLED Program in the summer of 2010, before he had assumed the position of Director. It was that decision that Applicant A subsequently appealed to the Appeal Panel. In support of his position Applicant A cites three instances "in this context" [i.e., in the context of that original decision] where Mr. Porcher refused various requests by Applicant A for information that he considered relevant to his original application.

I see no evidence of bias on the part of the Director. Nevertheless, it was his decision in the summer of 2010 that set these proceedings in motion. A reasonably informed member of the public might conclude that the Director's prior involvement in denying Applicant A's original application to the CPLED Program might influence him on Applicant A's request for an abridgment. In these circumstances it would have been preferable to delegate the task of considering Applicant A's request for an abridgment to someone other than Mr. Porcher so as to avoid any suggestion of bias.

Nevertheless, any prejudice that may have been suffered by Applicant A was cured by virtue of his right of appeal to the Chair of the Admissions and Education Committee and my decision to apply a standard of correctness to the Director's decision. I therefore dismiss this ground of appeal.

## **3. The weight given by the Director to various factors raised by Applicant A (Item nos. 3 – 7, 9 - 14)**

Applicant A argues that in arriving at his decision the Director failed to give "proper weight" to a number of factors, including: that his application was without precedent in Manitoba, that his application touched "upon the livelihood of a poor newcomer", that his first application for admission was submitted in 2008, that he was "only applying to be an articling student", that the CPLED Program is only offered on an annual basis, Applicant A's progress through "ongoing counseling", Applicant A's "recent success" in certain recent family court proceedings in which he is a litigant, his decision not to seek judicial review of the Appeal Panel's decision, Applicant A's Canadian citizenship and his lack of a criminal record, and Applicant A's "special circumstances", including his age, professional background in a foreign jurisdiction and completion of his legal education.

I've considered all of the matters raised by Applicant A afresh. With respect,

though, despite that fresh look I find that none of these factors is relevant to the issue raised by Applicant A's request for an abridgment, namely, whether there had been a "material change" in his circumstances between September 12, 2010 and the date of his request for an abridgment.

#### **4. The King decision (Item no. 8)**

Applicant A points to a recent discipline decision of the Law Society of Manitoba with respect to another member in a matter completely unrelated to Applicant A's situation. In my view, that decision is completely irrelevant to the factors to be considered on Applicant A's request for an abridgment.

#### **Conclusion**

In conclusion, I find that the Director's decision to deny Applicant A's request for an abridgment under Rule 5-28.1(3) was correct. I also find that the items raised by Applicant A on his appeal do not address the central issue raised by his request for an abridgment: whether in the seven months between September 12, 2010 and the date of his request for an abridgment there had been a "material change" in his circumstances relevant to his character and fitness to practice law.

Accordingly, Applicant A's appeal under Rule 5-28(8) is dismissed.

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**Ted Bock, Chair, Admissions & Education Committee**

## **APPENDIX**

### **LAW SOCIETY RULES**

#### **Exception**

**5-28(8)** Where the chief executive officer does not grant a person's abridgement request under rule 5-28.1(3), the person may appeal in writing to the chair of the committee within 14 days of his or her receipt of written confirmation of the decision and the right to appeal. The decision of the chair is final.

(ENACTED 04/10)

#### **Waiting period**

**5-28.1(2)** Subject to subsection (3), a person referred to in subsection (1) may not apply for admission, call or resumption for a period of two years after the later of:

- (a) the date the chief executive officer refused his or her application, or
- (b) the date a panel of the Admissions and Education Committee dismissed his or her appeal of the chief executive officer's decision to refuse the application.

(ENACTED 04/10)

#### **Abridgement**

**5-28.1(3)** A person referred to in subsection (1) may submit a written request to the chief executive officer for permission to abridge the two year waiting period set out in subsection (2) and the chief executive officer may grant an abridgement request only if he or she is satisfied that there has been a material change in the person's circumstances.

(ENACTED 04/10)

### **THE LEGAL PROFESSION ACT, C.C.S.M. c. L107**

#### **Delegation**

12(3) The chief executive officer may delegate to one or more employees of the society any of his or her powers, duties or functions.