



Decision No. 20150728

In the Matter of: Applicant A - Appeal of Decision dated June 16th, 2015

Hearing Date/Location: July 28th, 2015, 9:30 a.m. Teleconference of panel members, moderated from 219 Kennedy Street, Winnipeg, Manitoba

Panel: Todd A. Rambow — Chair
Dr. Lorna A. Turnbull
Suzanne Hrynyk

DECISION

Re: Appeal of June 16th, 2015, Decision by Richard Porcher, Director of Admissions and Membership (on behalf of the Chief Executive Officer, Law Society of Manitoba) denying exemption from Articling and CPLED requirements based on foreign practising experience

INTRODUCTION

The Legal Profession Act (SM 2002, c. 44) states in ss. 3(1) and (2) that the purpose of the Law Society of Manitoba is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence, and that in pursuing its purpose, the Law Society of Manitoba 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.

To that end, the Law Society of Manitoba has in place rules and procedures for the admission of applicants to the practice of law in Manitoba, whether they are law students having completed their studies, lawyers from other parts of Canada, or lawyers internationally.

In this regard, the Law Society of Manitoba is the "gatekeeper" for determining whom can practice law within the Province of Manitoba, consistent with its mandate of protecting the public interest. This is an important function which allows the profession to be independent and self-regulating.

This particular case deals with a lawyer having been admitted to the practice of law and being duly credentialed to practice law in India, now seeking to practice in Manitoba, and the denial of his request by Law Society of Manitoba to be exempted from having first to article and complete the CPLED requirements (ie. Canadian Centre for Professional Legal Education Program, known colloquially as the "Bar Admission" program).

The CPLED program consists of various modules designed to test a student's competencies in oral and written advocacy, legal research and writing, practice management, negotiations and drafting of wills, contracts and pleadings.

Articling, unless agreed to be abridged by the Law Society of Manitoba, normally consists of 52 weeks working under the supervision of a Principal whom has been duly approved by the Law Society of Manitoba.

BACKGROUND

The Appellant, [name omitted] ("Applicant A") is a lawyer called to the Bar in Punjab, India on October 27th, 1988. He practiced for 20 years, as described in his reference materials, in the fields of civil, property, revenue, civil, criminal and family law.

His Curriculum Vitae indicates that he received a Bachelor of Arts (1983) and a Bachelor of Laws (1988), both from Punjabi University Patiala, Punjab, along with a Diploma in personnel management and industrial relations, New Delhi, and that he received a Certificate of Qualification from the National Committee on Accreditation of the Federation of Law Societies of Canada (which is a determination that Applicant A's education and training is comparable to that provided by an approved faculty of law in Canada). He also notes that he is fluent in English, Hindi and Punjabi.

On May 22nd, 2015, Applicant A filed with the Law Society of Manitoba an Application for Exemption from Articling and CPLED Requirements based on Foreign Practising

Experience (the "Application"). In support, he also filed his Curriculum Vitae and a document entitled "Summary of Practice Experience Foreign Jurisdiction", wherein he listed and rated his experience in relation to different skill areas.

In his materials, Applicant A detailed his foreign practising experience and history within the legal profession in India, and requested to be "exempted from all of the CPLED requirements and all of the articling requirements of 52 weeks of full time articles."

THE DECISION UNDER APPEAL

In response to the Application, on June 16th, 2015, Richard Porcher, Director of Admissions and Membership for the Law Society of Manitoba wrote to Applicant A and advised him that he had denied the request for exemptions from CPLED and the articling requirements.

In his letter, Mr Porcher noted that his decision to deny the exemption was based on the following:

- i) despite a 20 year period practising law in India, Applicant A had not practiced in the past 7 years and this was considered to be an extended and significant length of time;
- ii) knowledge and skills which are not used fade over time; and
- iii) there are significant differences in the practice of law between India and Manitoba.

In response to this decision, Applicant A on June 30th, 2015, filed a Notice of Appeal with the Law Society of Manitoba, wherein he requested that Mr. Porcher's decision on June 16th, 2015, be reviewed and reconsidered in light of the information he had provided in his Notice of Appeal.

By letter dated July 2nd, 2015, Law Society of Manitoba Director of Regulation, Leah Kosokowsky wrote to Applicant A and advised she was writing on behalf of Richard Porcher (whom was away from the office), to advise that the decision had been reviewed and confirmed. She stated in particular:

We note that in your Notice of Appeal you advised that you wrote and failed the Law Society of Upper Canada's barrister exam in November 2013 and that you wrote and failed the Law Society of Upper Canada's solicitor exam in June of 2015. Your inability to pass these examinations supports the director's decision to decline your application for exemption and to require you to complete the Law Society of Manitoba's CPLED program and to article in Manitoba.

Applicant A has now asked that an appeal panel consider his Notice of Appeal and to overturn the June 16th, 2015 decision (as later confirmed on July 2nd, 2015).

A three member panel of the Admissions and Education Committee has been duly constituted to consider this appeal and provides its decision on the appeal herein.

A non-oral hearing was requested by Applicant A, so the appeal will be determined solely on the basis of the written materials provided by Applicant A and the Law Society of Manitoba.

APPLICANT A'S POSITION

Applicant A says that he should be exempted from the articling and CPLED requirements based on his foreign practising experience and, to that end, the decision of the Law Society of Manitoba to deny him is wrong.

He says that he had a diverse legal practice in India over a 20 year period, and he has provided two different references which confirm, amongst other things, his legal experience, abilities, professional responsibility, organizational skills and ethics.

He says that his practising experience in India is sufficiently similar to the practice of law in Manitoba. He says there is no significant difference in the practice of Law between India and Manitoba, and he would comply with the Laws of Manitoba that are different from India in his day to day practice of law.

He says from October 30th 2008, when he landed in Canada and onward, he always intended on pursuing accreditation as a lawyer in Canada, but personal health, family and property issues in India beyond his control caused considerable delay, particularly in his ability to complete the required legal studies for national accreditation. Any delay

(7years in total) was not intentional and he has always shown a *bona fide* intention to continue his career in the legal profession.

He says that he has taken courses through the National Committee on Accreditation and through the University of Western Ontario, leading to his receiving on June 7th, 2013, a Certificate of Qualification which states that he has demonstrated his legal education and training is comparable to that provided by an approved Faculty of Law in Canada.

He says that his is a special case, much time has already been lost due to his personal circumstances, and he doesn't want to lose further precious time. He asks that his wish to go into the legal profession be granted.

He asks that his appeal be allowed.

THE LAW SOCIETY OF MANITOBA'S POSITION

It is the position of the Law Society of Manitoba that Mr. Porcher's decision, as later reviewed and confirmed, is correct and/or reasonable and this appeal should be dismissed.

THE LAW

Applicant A is entitled to an appeal of Mr. Porcher's decision by virtue of Law Society of Manitoba Rule 5-28(1) which provides that:

5-28(1) A decision by 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.

Rule 5-28(7) provides that the appeal panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions.

THE LAW APPLIED TO THE FACTS OF THIS CASE

This panel notes that in addition to the materials already referred to above, Applicant A also provided three different Certificates of Character to the Law Society, wherein three different individuals attest that Applicant A is in their opinion a person of good character and repute.

All of the materials provided convince this panel that Applicant A is a competent and capable lawyer in India. We also accept his sincere expression that he would comply with the laws of Manitoba that are different from India in his day to day practice if allowed to practice law in Manitoba.

These things are not in dispute. However, these are not the issues for this panel. The issue is whether Mr. Porcher was correct in his decision to deny Applicant A an exemption from the articling and CPLED requirements.

After a full review of the evidence, material and argument before us, we conclude that Mr. Porcher was correct in his decision. We do not find any error.

This panel notes that while Manitoba and India share common legal roots, there are undoubtedly significant differences in law and particularly in legal procedure. There are even subtle, but important differences, in laws between Canadian jurisdictions, let alone foreign jurisdictions. For example, there can be significant variations across Canada concerning limitations of actions, civil procedure and rules of Court. While we take no issue with Applicant A's pledge to apply the laws of Manitoba which are different from India in his day to day practice, it is his ability to *detect and understand* the differences which is of concern.

This panel agrees that the 7 year period during which Applicant A has not practiced law, despite his best efforts to become accredited, is concerning. We agree with Mr Porcher's assertion that skills which are not used fade over time.

It is also concerning to the panel, as it was to the Law Society of Manitoba, that Applicant A failed the National Committee on Accreditation exams for Foundations of Canadian Law (once), Canadian Administrative Law (x3), and Canadian Criminal Law (x3). He was only able to become fully accredited with the National Committee on Accreditation on June 7th, 2013, upon completing courses at the University of Western

Ontario in Criminal and Administrative Law, achieving a D mark on both, which is noted on his transcript as representing a "marginal pass".

For these reasons, whether the standard of review to be applied is correctness or reasonableness (we did not receive any submissions from the parties on this), we do find it correct and reasonable when Mr. Porcher concluded Applicant A needed to complete the CPLED and articling requirements. We believe that Mr. Porcher's decision is consistent with the mandate of the Law Society of Manitoba to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

CONCLUSION

For the reasons as stated above, the appeal is dismissed. The Law Society of Manitoba's decision is upheld. Presumably, Applicant A is free to apply to the Law Society of Manitoba to complete the CPLED and articling requirements should he continue in his desire to practice law in the Province of Manitoba. This panel wishes him the best of luck in that regard.

DATED: The 11th day of AUGUST, A.D. 2015.

Unanimous Decision of the Panel



Todd Rambow, Chair



Dr. Lorna A. Turnbull



Suzanne Hrynyk