

THE LAW SOCIETY OF MANITOBA

In the Matter of: Khandaker Mazharul Haque – Appeal of Admission Decision

Hearing Date: January 12, 2017

Panel: Dean I. Scaletta – Chair  
Elliot H. Leven – Practising Member  
Carmen Nedohin – Public Representative

**DECISION**

Re: Appeal of November 29, 2016 Admissions Decision

**REASONS FOR DECISION**

**INTRODUCTION**

1. Khandaker Mazharul Haque was called to the Bangladeshi Bar on January 22, 1994, and was in active practice before the courts of that country from 1989 to 2001. He immigrated to Canada with his family in 2002, and has since become a Canadian citizen.
2. In August, 2016, Mr. Haque submitted an “Application for Admission to the Manitoba CPLED Program and as an Articling Student” to the Law Society of Manitoba (“the LSM”). A considerable amount of follow-up correspondence ensued between Mr. Haque and the LSM.
3. On November 29, 2016, the Director – Admissions and Membership for the LSM (“the Director”) approved the request for permission to apply as an articling student, subject to several conditions.

4. The conditions required that, on or before December 31, 2018, Mr. Haque either take and pass challenge examinations through the Federation of Law Societies of Canada National Committee on Accreditation ("the NCA") on Canadian Criminal Law, Foundations of Canadian Law, and Family Law, or that he take and pass courses in those three subjects at a faculty of common law at an accredited Canadian university. The conditions were imposed primarily because the Canadian common law degree held by Mr. Haque was dated more than six years before the date of his application for admission. A secondary concern was that Mr. Haque had never studied Canadian law in these specific areas.
5. On December 5, 2016, Mr. Haque submitted a Notice of Appeal to the Admissions and Education Committee seeking an exemption from the conditions imposed by the Director. He did not request an oral hearing.
6. For the reasons set out below, we are confirming the decision of the Director dated November 29, 2016 and dismissing the appeal.

## **JURISDICTION AND ISSUES**

7. This appeal is governed by Rule 5-28. Of note (and this is a theme to which we will return later in these reasons), these provisions are found in "Part 5 – Protection of the Public" of the *Law Society Rules* ("the Rules").
8. The LSM has published "Guidelines for Appeals of Admissions Decisions", the most recent version of which is dated August, 2014. We are satisfied that this appeal proceeded in accordance with those Guidelines.
9. Rule 5-28(2) requires that the appeal panel be comprised of two members of the LSM, one of whom may be non-practising or inactive, and a third person who must be a public representative. We are satisfied that this panel is properly constituted.
10. While the Rules contemplate an oral hearing at which the appellant and the LSM may appear and make representations, a hearing based on written submissions alone is the default and the norm. This panel was scheduled to meet in person on the afternoon of Thursday, January 12, 2017. Severe inclement weather made it impossible for the full panel to convene in person, so the hearing and discussion was conducted by private, secure teleconference. We are satisfied that the appeal hearing was properly conducted.

11. Rule 5-28(7) provides that the panel may “dismiss the appeal, make any decision [the Director] could have made, or allow the appeal with or without conditions.” As noted above, our decision is to dismiss the appeal. We are satisfied that this decision is expressly permitted by this Rule.
12. In his Notice of Appeal dated December 5, 2016, Mr. Haque seeks an exemption from the conditions imposed by the Director in his decision dated November 29, 2016. He also requests that, upon admission, he be exempted from the articling and CPLED requirements under the *Rules*.
13. In his brief, counsel for the LSM submits that this panel only has jurisdiction with respect to the first request, being the conditions imposed because the Canadian common law degree held by Mr. Haque was dated more than six years before the date of his application for admission. We agree with this submission. Accordingly, this decision deals only with the request for an exemption from the conditions imposed in the decision of the Director dated November 29, 2016.

## **STANDARD OF REVIEW**

14. As other appeal panels have noted, the standard of review in these matters seems to be somewhat flexible and fluid – a “moving target” as it were.
15. Nevertheless, from our review of the precedents included in the LSM brief we gleaned several guiding principles:
  - (i) Strictly speaking, the standard of review on appeals of this nature ought to be correctness. While the Director is to be acknowledged as an individual with considerable experience and expertise in the assessment and application of law society admissions criteria, no especial deference is to be accorded to his decisions with respect to findings of fact, application of legislation and *Rules*, or exercise of discretion.
  - (ii) Given that the materials under consideration on this appeal are essentially the same as those considered by the Director, this panel is in as good a position as the Director to assess whether the specific conditions imposed are appropriate in the circumstances. The panel can, and should, consider the matter, in its entirety, “afresh”.
  - (iii) It is open to this panel to “do as it thought right, without any need to parse the reasons of the Director” (*Bergen v. Law Society of Manitoba*, Decision No. 20161031, para. 50), notwithstanding the absence of new information and notwithstanding that this appeal has proceeded with remarkable alacrity by all parties.

## RELEVANT LEGISLATION AND RULES

16. Section 3(1) of *The Legal Profession Act*, C.C.S.M., c. L107 (“the Act”) states that the purpose of the LSM is “... to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.” These are not mere platitudes or aspirational statements. These are the very reasons the LSM exists.
17. Section 3(2)(a) of the Act requires that the LSM “establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba”. Section 17(5)(b) permits it to make rules that “establish requirements, including educational and moral requirements, and procedures for admitting persons as members”.
18. Pursuant to Section 17(5)(b) of the Act, the LSM enacted Rules 5-4(1) and 5-4.1.

Rule 5-4(1) reads:

**Application for admission as an articling student**

**5-4(1)** Subject to rules 5-4.1 and 5-4.5, 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 approved by the Federation of Law Societies of Canada (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 qualification from the NCA dated not more than 6 years before the date of the application for admission;
- (c) provide proof that he or she is registered to take or awaiting results of examinations or courses prescribed by the NCA;

and must

- (d) provide proof that he or she is of good moral character and a fit and proper person to be admitted;
- (e) 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)
- (f) furnish all documentation required by the chief executive officer; and
- (g) pay the student admission fee under subsection 19(1) of the Act. (AM. 06/03; 04/04; 12/05; 05/07; 10/07; 10/08; 10/10; 02/13; 04/13)

There is nothing in the material to suggest that Mr. Haque has ever obtained an NCA Certificate of Qualification, or that he is awaiting the results of any examinations or courses prescribed by the NCA. Therefore, only the provisions of Rule 5-4(1)(a) are relevant to this appeal.

Rule 5-4.1 reads:

**Exception: when permission is required**

**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 qualification from the NCA, 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) (AM. 05/07; 10/07; 04/13)

19. *The Fair Registration Practices in Regulated Professions Act, C.C.S.M., F12* is also relevant to the conduct of this appeal. Section 4 imposes a general duty on the LSM to "provide registration practices that are transparent, objective, impartial and fair". Section 6 requires that registration decisions be made in writing and within a reasonable time. Section 7 stipulates that an internal review of, or appeal from, a registration decision must be timely and must accord with common law principles of natural justice and procedural fairness.

## **MATERIALS BEFORE THE PANEL**

20. The following written materials were before the panel on January 12, 2017:
- (i) Booklet entitled "Appeal of Decision of Admissions & Membership" consisting of an Index and 32 numbered tabs, including the applications and supporting materials submitted by Mr. Haque, and correspondence relating to the various applications; and,
  - (ii) Booklet entitled "Submission of the Law Society of Manitoba" consisting of a Table of Contents and 11 tabs numbered 33 to 43, both inclusive, including the Notice of Appeal dated December 5, 2016, excerpts from the *Law Society Rules* and from internal LSM Minutes and memoranda, and copies of relevant prior court and appeal panel decisions.
21. Mr. Haque did not make formal written submissions. These are to be found in the materials included in the first booklet and those attached to, and forming part of, his Notice of Appeal.
22. All of the materials were reviewed by the panel before it considered the issues and made its decision. The panel made independent decisions on all issues. No individual who participated in the formulation of the decision of the Director dated November 29, 2016 had any involvement with the process or decision-making aspects of this appeal.

## **SUMMARY OF THE EVIDENCE PRESENTED**

23. Mr. Haque was born in rural Bangladesh in 1950. He is now 66 years of age.
24. He obtained an LL.B. from Dhaka University in Bangladesh in 1986, and an LL.M. in International and Comparative Law from Vrije Universiteit in Belgium in 1989.
25. Like Manitoba, Bangladesh is a jurisdiction with legal traditions and institutions modeled on the British common law system.
26. From 1989 to 1994, Mr. Haque practiced in the Dhaka District Court in the areas of criminal law and civil litigation. From 1994 to 1996, he practiced as an Advocate at the High Court Division, Supreme Court of Bangladesh in the areas of public and family law, writ jurisdiction, and constitutional law.

[Note: This information is found in the C.V. under Tab 2 in the materials. The "Application for Exemption from Articling and CPLED Requirements Base on Foreign Practising Experience" (Tab 7, dated July 25, 2016), however, indicates that Mr. Haque practiced in "All courts in Bangladesh" from November 29, 1989 to October 30, 2001. A letter from the Law Society of Upper Canada ("the LSUC") dated May 1, 2008 (Tab 9) indicates that his "own law practice" continued from 1989 "until your immigration to Canada in 2002". We could not find any satisfactory explanation in the materials for this apparent discrepancy in practising experience.]

27. These periods of active legal practice appear to have overlapped with his work as a National Project Co-ordinator and a Project Director (c. 1993 to 2001) in the area of human rights. Earlier in his career, from 1982 to 1989, Mr. Haque had also served as Deputy Director of the Bangladesh Institute of Law and International Affairs (BILIA). As well, he has experience with the delivery of judicial and professional ethics training, and with legislative drafting.
28. In November, 2002, Mr. Haque immigrated to Canada with his family. Shortly thereafter, he applied to the NAC for a Certificate of Qualification. In its April 30, 2003 response (Tab 13), the NAC recommended that Mr. Haque be issued a Certificate of Qualification on the condition that he write (and achieve an "unconditional pass" on) examinations in each of 12 subjects; namely, "Taxation, Basic Corporate Law [Business Associations], Constitutional Law [must have Charter component], Evidence, Administrative Law, Remedies, Commercial Law, Criminal Law, Property, Civil Procedure, Family Law and Trusts".

29. The letter from the NAC outlined several acceptable methods for meeting these conditions, including enrollment in a common law program at a Canadian law school. Regardless of the method chosen by Mr. Haque, the conditions were to be fulfilled no later than September, 2006.
30. The material does not indicate what steps, if any, Mr. Haque took towards fulfilling the NAC requirements between April, 2003 (Tab 13) and September, 2005, when he started the Common Law program at the University of Ottawa.
31. Mr. Haque graduated with an LL.B./J.D. from the University of Ottawa in May, 2008.
32. While one would not normally "look behind" a particular degree, in the context of both the NAC letter dated April 30, 2003 (Tab 13) and the decision of the Director now under appeal (Tab 32), a close review of the University of Ottawa transcript (Tab 14) disclosed several areas of concern for the panel. In no particular order of importance, these were:
  - (i) In his three Constitutional Law courses, Mr. Haque received grades of F, C<sup>+</sup>, and D<sup>+</sup>.
  - (ii) He also received an F in Trusts, and a D in Civil Procedure.
  - (iii) No courses at all were taken in Evidence, Commercial Law, Criminal Law, Property Law, or Family Law.
33. On March 14, 2008, the LSUC granted Mr. Haque an exemption from the Skills and Professional Responsibility Program in its Licensing Process. On May 1, 2008, the LSUC granted him a "full waiver of the ten-month articling requirement". Although he had not yet secured an articling position, Mr. Haque was "registered to complete the Barrister and Solicitor examinations May/June 2008". [Note: Both of the LSUC letters are found at Tab 9.]
34. According to the LSUC letter dated September 29, 2016 (Tab 26), Mr. Haque did not complete his licensing examinations. The letter does seem to confirm, however, that the exemptions from the articling requirement and from the Skills and Professional Responsibility Program remained in place.

[Note: The third document in the package aggregated under Tab 31 is an email from Mr. Haque to the LSM dated September 21, 2016 which references an LSUC "student I.D. (valid July 2016)". The third document under Tab 24 is an image fitting this description, but unfortunately the resolution is so poor that it is impossible to determine whether this is an image of the "student I.D." referred to in the email, or whether it remained valid in July, 2016.]

35. Although no specific dates, or even years, are mentioned in his letter to the LSM dated September 16, 2016 (Tab 23), Mr. Haque indicates that he experienced a number of personal setbacks during the time he was to have written his Ontario licensing examinations. These included the deaths of two close relatives and a close friend, and his having to care for an aging parent.
36. The panel had some difficulty reconciling those statements with the document dated October 29, 2016 (Tab 30) submitted by Mr. Haque in response to several questions posed by the Director in his letter dated October 27, 2016 (Tab 27).

For example, he advises at para. 6 that his younger brother died in a car accident on September 1, 2010, leaving behind a young family which Mr. Haque understandably felt an obligation to assist. A tragic circumstance to be sure, but this event occurred almost 2½ years after the time frame when he was to have written the LSUC examinations (“May/June 2008”).

Para. 6 goes on to describe other setbacks which befell Mr. Haque during “the following years” (that is, presumably, *after* September, 2010), and which led him to seek, and obtain, an extension from the LSUC to complete his licensing examinations. [Note: There are no other references to this extension in the materials, except for a statement (on Page 1 of the “Appeal to the Admissions and Education Committee” document attached to the Notice of Appeal) to the effect that the LSUC letter dated September 29, 2016 (Tab 26) granted an extension to 2018. A careful reading of the letter, however, discloses no references whatsoever to an extension, or to 2018 for that matter.]

37. The document at Tab 30 also endeavours to address some apparent gaps in practice experience identified by the Director. For the purposes of this appeal, only a few need be mentioned:
  - (i) Mr. Haque was actively engaged in practice before the Bangladeshi courts from 1989 to 2001, “and then occasionally from January 2010 to June 2016 that depended on [his] physical presence in Bangladesh” (para. 7). When he could not appear in person, Mr. Haque would discuss the merits of a particular case (by telephone or by post) with an associate (para. 8).
  - (ii) In March, 2012, Mr. Haque was offered a position of “Legal Advisor” to two Bangladeshi shipping companies. [Note: The offer is set out in a letter from Mr. K.M. Mahmood ur Rahman dated March 5, 2012, which is found at Tab 30.] Because he could not be physically present in Bangladesh on a full-time basis, Mr. Rahman agreed to retain Mr. Haque on a “contract” basis. Mr. Haque represented the two companies in six matters between 2012 and 2016, appearing in person when circumstances permitted (paras. 11 & 12).



- (iii) A four-page “e-ticket” seems to confirm that Mr. Haque was present in Bangladesh, at the behest of Mr. Rahman and the two shipping companies, from May 4, 2016 to July 29, 2016, a period of almost three months.
- (iv) Mr. Haque maintained his practising status in Bangladesh between 2002 and 2009, but was not actively engaged in “court practise” during those years (para. 13).

## **DISCUSSION AND ANALYSIS**

- 38. Rules 5-4(1) and 5-4.1 are referred to in the materials as the “stale-date” rules. The first draws a line at the admittedly arbitrary point (six years) at which the Benchers of the day determined that the legal education of an applicant was so out-of-date as to present real challenges to his or her success in the two mandatory pre-Call programs – articling and CPLED. The second creates an opportunity for an applicant to demonstrate that his or her knowledge is still reasonably current, notwithstanding that their Canadian common law degree (or the NAC Certificate of Qualification) was dated more than six years prior to their application for admission to the LSM as an articling student.
- 39. These provisions, taken together, strike a necessary balance between fairness to the candidate (who, for any number of personal reasons, may not have been able to embark on the pre-Call programs immediately after graduation) and protection of the public (who are entitled to assume that the LSM, in issuing a practising certificate to a particular individual, has exercised appropriate vigilance and due diligence in furtherance of its express statutory purposes and duties).
- 40. When Mr. Haque first applied to the LSM in August, 2016, his Canadian common law degree was already “stale-dated” by more than two years. This is significant. Further, while at the University of Ottawa, he had taken some, but not all, of the courses that the NAC had determined he needed back in 2003, another five years earlier. His poor grades in some of the other “core” courses identified by the NAC, combined with his complete lack of exposure to the other specific areas identified by the Director, were an additional – and legitimate – cause for concern.
- 41. In his materials, Mr. Haque expresses his intention and desire to assist members of the Bangladeshi community in Winnipeg with their immigration and human rights issues. This is a laudable goal, and the panel recognizes the very real value that an individual such as Mr. Haque – when properly qualified to practice law in Manitoba – would bring to an undoubtedly underserved segment of our society.

42. But immigration (and, in particular, refugee) and human rights problems do not exist in isolation. *Charter* issues regularly intersect, often in complex ways, with “black letter”, statutory rights and obligations. A conviction for even a minor *Criminal Code* offence could have a serious impact on the right of an individual to enter, or remain in, Canada. The breakdown of an immigrant family unit could have serious financial consequences for individuals who may have sponsored the family.
43. Members of a minority community facing complex legal issues are among the most vulnerable of those requiring the services of a lawyer. Those working in these areas must be alive to the myriad potential pitfalls because, for many of their potential clients, a mistake by the lawyer may literally have “life or death” consequences for the client.
44. Simply put, the public must be protected from individuals whose gaps in legal knowledge may inadvertently result in their making a bad situation worse for the client. This is the “gatekeeper” role which the Manitoba Legislature has delegated to the LSM, and its importance to Manitobans cannot be overstated.
45. While it is true that some gaps in specific legal knowledge can be remedied by diligent and focused self-study, counsel for the LSM correctly points out (para. 7) that: “[The] application is not based on any plan to become current [in the specific areas addressed in the decision of the Director under appeal] and no such plan has been put forward.”
46. The only hint at self-study in the materials is found at Tab 23, where Mr. Haque writes: “... I have gone through a series of recent judgments of the Manitoba Court of Appeal and the Court of Queen’s Bench which are unique and remarkable judgments and whose judgments could be the learning lessons for any legal practitioner in the world.” While it is gratifying that Mr. Haque appreciates the high quality of the judgments crafted by our superior court judges, the panel notes that he does not mention any of the areas of law discussed in the judgments which he read. It is certainly possible that those judgments touched upon the areas of concern noted by the Director, but the panel was not prepared to speculate that this might in fact be the case.
47. The panel also considered whether the conditions imposed by the Director constituted an unreasonable barrier to Mr. Haque becoming licensed to practice law in Manitoba. If so, this would be contrary to the spirit, if not the letter, of *The Fair Registration Practices in Regulated Professions Act*.

48. The Director required that Mr. Haque write three challenge examinations, or take three law school courses, within a two-year time frame. "Sample" examinations in the various subjects are available for review on the NCA website. The panel took the opportunity to review the sample examinations in the three areas identified by the Director.
49. Although variations are certainly contemplated, it appears that each examination is administered in a three-hour, "open book" format, and each is graded on a "Pass/Fail" basis, with 50% or greater constituting a "Pass".
50. While the examinations in Canadian Criminal Law and Family Law definitely require some specific, technical knowledge on the part of a candidate, the Foundations in Canadian Law examination could be passed with only a moderate amount of self-study and preparation. On the whole, the panel did not find the conditions imposed by the Director to be overly onerous, and felt that the two-year time frame was eminently reasonable in the circumstances.

## DECISION

51. The appeal is dismissed. The decision of the Director dated November 29, 2016 is confirmed.

January 17, 2017

  
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Dean I. Scaletta – Chair

  
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E.L. Elliott H. Leven – Practising Member

  
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Carmen Nedohin – Public Representative