



Decision No. 20180507

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF: Fazle Ghaffar - APPEAL OF EDUCATION DECISION

Hearing Date: May 07, 2018

Panel: Joyce Dalmyn – Chair
 Anette Horst – Practising Member
 Maureen Morrison – Public Representative

DECISION

Re: Appeal of September 15, 2017 Education Decision

REASONS FOR DECISION

INTRODUCTION

1. Fazle Ghaffar is a graduate of a Law School in Pakistan. He also practiced law in Pakistan for 7 years prior to immigrating to Canada. He was unsuccessful in completing the Qualifications Examinations in 2014 -2015, on two separate occasions. He then registered in the CPLED program, commencing in the middle of the 2015 – 2016 CPLED year. He completed 5 modules, however was unsuccessful in 2 modules. He was successful in passing the supplemental examinations in those two modules. He continued with the further 5 modules in the 2016 – 2017 CPLED year. He breached the CPLED Program Agreement and the CPLED Integrity Policy, resulting in a grade of Competency Not Yet Demonstrated in one of his modules. At that time, it was discovered that he had also breached the CPLED Program Agreement and the CPLED Integrity Policy in one of the modules completed in the previous CPLED year, so his grade in that module was changed to Competency Not Yet Demonstrated. He was also unsuccessful in 2 further modules during the 2016 – 2017 CPLED year. As a result of a grade of Competency Not Yet Demonstrated in 6 of the 10 modules

(although he was successful on the supplemental examination in 2 of those modules), he was not allowed to write further supplemental examinations as he had more than three grades of Competency Not Yet Demonstrated, as per Law Society Rule 5-10(3).

2. Mr. Ghaffar applied to repeat the CPLED Program during the 2017 – 2018 CPLED year. He was denied admission, by letter of the Director dated 15 September 2017, on both the grounds of competence and failure to demonstrate that he meets the good character requirement. Because Mr. Ghaffar had breached the CPLED Program Agreement and CPLED Integrity Policy, there is an onus on him to rebut the presumption that he is not of good character
3. On 28 September 2017, Mr. Ghaffar submitted a Notice of Appeal to the Admissions and Education Committee, appealing the refusal to admit him to the 2017 – 2018 CPLED program. He requested an oral hearing. That hearing took place on 07 May 2018, at the offices of the Law Society of Manitoba. Mr. Ghaffar appeared and represented himself. Mr. Rocky Kravetsky appeared for the Society.
4. At the conclusion of the Hearing, we confirmed the decision of the Director dated 15 September 2017, and dismissed Mr. Ghaffar's appeal. At that time, we gave brief oral reasons for our decision. It was important to do so, as Mr. Ghaffar cannot reapply to the CPLED program for 2 years from the date of our decision, based on Law Society Rule 5-28.1. We confirmed that we would provide full written reasons at a later date. These are the written reasons.

JURISDICTION AND ISSUES

5. This appeal is governed by Rule 5-28, found in "Part 5 - Protection of the Public" of the *Law Society Rules*.
6. A hearing proceeded on 07 May 2018 in accordance with the Law Society of Manitoba Guidelines for Appeals of Admissions decisions.

STANDARD OF REVIEW

7. A number of guiding principles are set out in the brief and precedents provided by counsel for the Law Society of Manitoba, including:
 - a. The standard of review on appeals of this nature ought to be "correctness";
 - b. No special deference is to be accorded to the Director, regarding findings of fact, application of legislation and *Rules*, or exercise of discretion;
 - c. As the material considered by the Director and this Appeal Panel are essentially the same, the panel can and should consider this matter entirely "afresh".

RELEVANT LEGISLATION AND RULES

8. Subsection 3(1) of *The Legal Profession Act, C.C.S.M., c. L107* (the "Act") states 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."
9. Subsection 3(2) of the Act requires that the Law Society of Manitoba "establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba". Subsection 17(5)(b) permits the making of rules that "establish requirements, including educational and moral requirements, and procedures for admitting persons as members".
10. Part 5 of the Law Society Rules deals with admissions. Rule 5-4(1)d specifically requires that an applicant must "provide proof that he or she is of good moral character and a fit and proper person to be admitted".

MATERIALS BEFORE THE PANEL

11. The following written materials were before the panel on May 07, 2018:
 - (a) Binder entitled "Record" consisting of an Index and 104 numbered tabs, including the Notice of Appeal, applications submitted by Mr. Ghaffar, correspondence between Mr. Ghaffar and the Director, CPLED Program documents, Assignments prepared by Mr. Ghaffar, correspondence between Learning Group Facilitators and the Director, Mr. Ghaffar's marking sheets, and Novus Scan reports comparing Mr. Ghaffar's final assignments with those of a previous CPLED student in another jurisdiction.
 - (b) Drive provided by Mr. Ghaffar containing an index and 32 items including a "Statement of Mr. Ghaffar" dated 28 February 2018, "Written Submissions" dated 28 March 2018, a Psychological Assessment Report prepared by Vuyo Mpumlwana dated 13 January 2018, "Remorseful Letter", a duplication of various materials included in the Record, and some caselaw.
 - (c) Letters of reference submitted by Mr. Ghaffar.
 - (d) Booklet entitled "Submission of the Law Society of Manitoba", including written argument and 13 numbered tabs with relevant legislation, Rules, and caselaw. Note, some of the rules provided in the materials were passed subsequent to the incidents which occurred in relation to Mr. Ghaffar. Law Society staff was able to provide the rules in force at the relevant times. Copies of those materials were provided to all parties during the course of the Hearing.

- (e) Materials that were provided during the hearing as a result of an application for disclosure. Those materials were admitted collectively as Exhibit 1, and included correspondence between the Director and a student "SS" as well as meeting notes, all from November 2016. These materials were deemed relevant as Mr. Ghaffar was present at the meeting that the letters and notes relate to, at the request of "SS".
- (f) An email from the Director to Mr. Ghaffar, dated 14 January 2016, submitted during the hearing by Mr. Ghaffar.

12. The Record was provided to Mr. Ghaffar well in advance, and Mr. Kravetsky's materials were provided less than a week prior to the hearing. All items were considered by the members of the appeal panel. No member of the appeal panel had any prior involvement with the decision that resulted in the appeal.

MOTION FOR DISCLOSURE

13. Mr. Ghaffar sought disclosure of correspondence between the Director and another student, "SS", as well as notes of a meeting between those parties, during which Mr. Ghaffar was present. As Mr. Ghaffar was present during the meeting, at the request of "SS", the materials would not breach the confidentiality of student "SS", and did in fact support the assertion of Mr. Ghaffar that he encouraged "SS" to tell the truth. Although the letter of "SS" did confirm that Mr. Ghaffar encouraged him to tell the truth, this certainly was insufficient to rebut the presumption that Mr. Ghaffar was not of good character. Copies were obtained and provided to all parties.
14. Mr. Ghaffar sought disclosure of the videos of certain other students during the Oral Advocacy Program. (Mr. Ghaffar included his Oral Advocacy presentation with his materials.) He indicated that he wished the panel to compare his presentation to that of certain other students, as he questioned his grade of Competency Not Yet Demonstrated. As Mr. Ghaffar had abandoned an earlier appeal dated March 31, 2017 in relation to the grades he received (both in advance of the Hearing and confirmed at the Hearing), this material was not relevant. Further, there is certainly insufficient basis to violate the privacy of other students in this fashion. Most significantly, the videos are only kept in the instance of a grade of Competency Not Yet Demonstrated, so the videos sought no longer exist. (The videos have been taped over by subsequent students.) The application to provide video presentations of the Oral Advocacy examinations of other students was denied.
15. In his submission, Mr. Ghaffar stated that the failure to provide the disclosure that he requested in advance of the Hearing was "in fact tainted by a racial animus". There was absolutely NO evidence of racial animus provided. Rather, Mr. Kravetsky advised the Panel that previous counsel for Mr. Ghaffar abandoned the disclosure requests after the failure to produce same were explained and no relevance could be demonstrated.

SUMMARY OF THE EVIDENCE PRESENTED

16. Fazle Ghaffar completed his Law Degree in Pakistan. The National Committee on Accreditation of the Federation of Law Societies of Canada issued a Certificate of Qualification to Mr. Ghaffar.
17. Mr. Ghaffar submitted an Application for Exemption from the requirement to complete the Articling and CPLED requirements for call to the bar in Manitoba. That application was granted, subject to Mr. Ghaffar successfully completing the qualification examinations. Despite 2 attempts to complete those examinations during the years 2014 to 2015, Mr. Ghaffar did not pass those examinations and therefore was required to complete the articling and CPLED requirements.
18. Mr. Ghaffar registered in the 2015-2016 CPLED program, commencing in January 2016. He completed 5 modules, however received grades of Competency Not Yet Demonstrated in 2 of those 5 modules. Mr. Ghaffar completed supplemental examinations for those two modules and received grades of Competency Demonstrated on the supplemental examinations.
19. Mr. Ghaffar continued in the 2016-2017 CPLED program in September 2016 with the remaining 5 modules. In October 2016 it was determined that Mr. Ghaffar had breached the CPLED Integrity Policy in two modules, one in the 2015-2015 CPLED Program and one in the 2016-2017 Program. As a result of the breach of the Integrity Policy, he received grades of Competency Not Yet Demonstrated in those two modules. It is noteworthy that in the module completed in 2016-2017, the grade was Competency Not Yet Demonstrated even without the breach. Mr. Ghaffar received grades of Competency Not Yet Demonstrated in 2 further modules in the 2016-2017 program. As a result, of having grades of Competency Not Yet Demonstrated in more than 3 modules Mr. Ghaffar was not allowed to write further supplemental examinations per Law Society Rule 5-10(3).
20. In his written submission, Mr. Ghaffar asked this panel to re-grade some of his assignments. Not only would this be inappropriate, but it would be entirely irrelevant as Mr. Ghaffar abandoned his appeal of the failing grades and only appealed in relation to the denial to re-admit him to the CPLED program.
21. Mr. Ghaffar applied to register in the 2017 - 2018 CPLED program. That application was denied, on two grounds, first on the basis that Mr. Ghaffar lacked the ability to succeed academically and second because he did not satisfy the Director that he met the good character requirement.
22. Mr. Ghaffar argues that not only should he be re-admitted to the program, but that he should have 2 years to complete the program, so that he has the time to write supplemental examinations in any modules in which he may receive a grade of Competency Not Yet Demonstrated.

23. Mr. Ghaffar further argues that he has addressed the competency issue by taking some paralegal courses in Ontario, but is unable to provide a course outline, and was not required to complete any assignments during the course, so cannot provide any material he prepared during the courses to demonstrate that these programs are relevant or effective in addressing the issues with his competence.
24. Mr. Ghaffar argues that he has demonstrated he is of good character because 1) he apologized after he was caught plagiarizing some of his assignments, 2) he did not plagiarize further assignments after he was caught, 3) he did not understand what plagiarism was (as he suggests that is not a known concept in Pakistan), 4) he demonstrated good character by encouraging "SS" to tell the truth to the Director when "SS" was also involved in plagiarism, and 5) he has taken an online character building course.
25. Mr. Ghaffar has taken the step of having Vuyo Mpumlwana complete a psychological assessment, subsequent to the Director denying his application to re-enter the CPLED program. This report dated January 13, 2018 was not available to the Director when she made her decision.

DISCUSSION AND ANALYSIS

26. The obligation imposed on the Law Society of Manitoba by virtue of s. 3(1) of the *Legal Profession Act* is " . . . to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence." Those pillars of the profession can only be upheld when applicants are required to establish their competence, integrity and independence through compliance with the rules for admission.
27. This Appeal Panel had the opportunity to hear from and to ask questions of Mr. Ghaffar at the Hearing, in addition to reading his written submission. It appears that Mr. Ghaffar continues to struggle with the proper use of the English language. He changes from first to third person within the span of one sentence in his written submissions. He appears to have challenges comprehending what is asked of him. His descriptions of the paralegal courses he took appear to be parroted from a course syllabus. He advised the panel that those courses had no assignments, and only a final exam.
28. Mr. Ghaffar agrees that he signed the CPLED policy guidelines, but claims that he either did not read them and/or did not understand them. This is of great concern to the Appeal Panel. It is unclear if the challenge is mastery of the English language or an understanding of the contents of the material. He did confirm that he did not ask his principal, or anyone else, to explain the guidelines to him.
29. While Mr. Ghaffar apologized to the Director, unfortunately, it is unclear if he in fact understands what he did wrong. He persists in stating, in both his written and oral submission, that he only "took some ideas" from the work of a friend

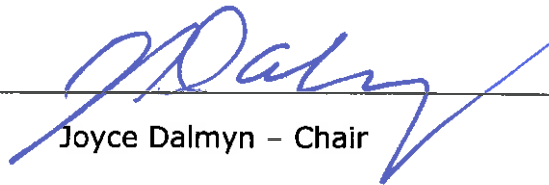
who had already completed the CPLED program in Alberta. He went on to state that the material he used was not taken from his friend's assignments (in spite of the identical wording in multiple places) but rather from an online service called "Law Depot". He does not appear to understand what plagiarism is, and why it is a problem when the requirement of good character is considered. Further, he repeatedly downplayed his actions and decisions by stating it was "just a mistake".

30. Mr. Ghaffar focused on the *Pashtun* culture from where he comes in Pakistan, and his fear of reprisals to his family in Pakistan if he betrayed the friend who provided him with CPLED materials submitted during a previous year in a different province. Unfortunately, lying about the name to the Director, does not explain the cheating in the first place. Nor does it explain why he would invent an elaborate fiction for both Ms. Carrington (Equity Ombudsman for the Law Society, to whom he states he had been referred due to his state of upset when initially confronted regarding his plagiarism) and also to the Director, rather than admit that he received the material from a previous student without naming the student. Further, it does not explain why he did not come forward and admit his wrongdoing when the Law Society sent out a reminder of the obligation on students to submit only their own work. Rather, he waited to confess until he was called into a meeting by the Director. The most telling response during his oral submission is that he cheated because the courses were "difficult".
31. Mr. Ghaffar appears to have significant difficulty with either his mastery of the English language or his understanding of the concepts being taught in the CPLED program. Mr. Ghaffar does not grasp what plagiarism is, and why it is a problem. It would be unfair to Mr. Ghaffar to allow him to retake the CPLED program at this time as it is unlikely he will succeed. If he is accepted into the CPLED program in the future, Mr. Ghaffar will NOT be granted an extra year to complete the program as per his written request, to allow him time to write supplemental exams. Further, as spaces in the CPLED program are limited, it is also unfair to prevent another student from taking the program, to allow Mr. Ghaffar yet another opportunity to take the CPLED program when it appears he is not yet ready to be successful.
32. Mr. Ghaffar has not rebutted the presumption that he is not of good character. This is because insufficient time has elapsed from the time of the breach of the CPLED Integrity Policy and because Mr. Ghaffar does not yet demonstrate an understanding that what he has done was wrong and why it is of such great concern to the Law Society. His admission of wrongdoing is very limited. The remedial courses he has taken are not relevant. Seeing a Psychologist is a good start to addressing the issue of good character.
33. In light of the decision in *Bergen v. The Law Society of Manitoba*, Decision No. 20161031, para. 50, this Appeal Panel had the right to consider this matter afresh and was not limited to a review of the decision of the Director. In this case, we arrived at the same conclusion by either route.

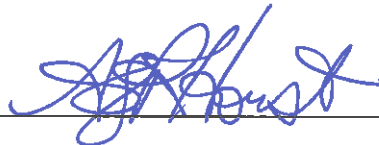
DECISION

34. The appeal is dismissed. The decision of the Director dated September 15, 2017 is confirmed. This decision was granted on 07 May 2018, and these are only the written reasons confirming that decision.

June 15, 2018



Joyce Dalmyn – Chair



Annette Horst – Practising Member



Maureen Morrison – Public Representative