



Decision No. 20190916

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF: Gurcharan Singh - APPEAL OF ADMISSIONS and
MEMBERSHIP DECISION

Hearing Date: September 16, 2019

Panel: Helga D. Van Iderstine – Chair
Sacha Paul – Practising Member
Marston Grindley – Public Representative

DECISION

Re: Appeal of August 1, 2019 Admissions and Membership Decision

REASONS FOR DECISION

Introduction

Mr. Gurcharan Singh is a lawyer in India. He has applied for admission to The Law Society of Manitoba and has requested exemption from the Articling portion of the Admission requirements. The Director, Admissions and Membership ("the Director"), after considering this request, provided Mr. Singh with a partial exemption from the Articling requirement such that he would have to article for 26 weeks rather than the entire 52-week period, which is the current general requirement for all new applicants. Mr. Singh would still have to complete CPLED. Mr. Singh appeals that decision and requests an exemption from the Articling portion of the program. He does not take issue with his requirement to complete CPLED in this Appeal.

For the reasons set out below, the Committee dismisses the Appeal.

Jurisdiction, Standard of Review and Applicable Rules

This is an appeal pursuant to Rule 5-28 (1) of the Law Society Rules.

The Director's decision was made on August 1, 2019 and communicated to the Appellant on August 2, 2019. The Appellant filed his Appeal on August 12, 2019 and was thus within the time provided for an Appeal. Written materials relating to his Appeal were provided to the Committee. The Appellant requested the Appeal be done in writing and did not request an oral hearing. The Law Society of Manitoba responded to the Appeal and provided to Mr. Singh and the Committee the record, a submission and relevant case law. Mr. Singh responded. The Committee met on September 16, 2019. There were no appearances.

In considering the standard of review, the relevant section of *The Legal Profession Act* states:

"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 by the completion and filing of the required notice of appeal within 14 days of receipt of written confirmation of the decision and the right of appeal. The appeal process will be governed by guidelines adopted by the benchers."

The Committee reviewed a number of prior decisions of the Appeal Committee in which the Standard of Review has been commented upon.

The following guiding principles arise from the previous decisions of the Committee:

- A. The standard of review on appeals ought to be "correctness".
- B. Although no special deference is to be accorded to the Director with respect to any findings of fact, the application of legislation, rules or exercise of discretion, it is reasonable to consider his decisions, as it is clear that the Director would have expertise in the application of this section and the administration of the education and membership programs. The material considered by the Director and the Appeal are often similar or the same as that provided to the Committee.
- C. The Committee may consider the matter as a fresh review of the materials and treat the review as one which is new or *de novo* for which the Committee must review the record in making its decision.
- D. The Committee may "do as it thought right, without any need to parse the reasons of the Director" – (*Bergen v. The Law Society of Manitoba*, Decision No. 20161031, Para.50), meaning it is open to the Committee to substitute its decision for that of the Director.

Both the Law Society and Mr. Singh agreed that the standard of review was correctness.

In consideration of Point D above, the Committee also notes that Rule 5-28(7) of the Law Society Rules contemplates that the Committee "may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions". This also supports a finding that correctness is the standard to apply.

The Committee thus determined and applied a standard of correctness to the decision of the Director and reviewed the Record provided.

In considering the requirements for admission the Committee reviewed Rule 5-5(1) which states:

"5-5(1) Subject to subsection (4), every articling student must:

(a) 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;

(b) commence articling before the commencement of the 6th module of the CPLED program and any student who has not commenced articles by the 6th module shall be withdrawn from the CPLED program unless the chief executive officer has permitted the student to continue;

(c) serve, unless abridged by the chief executive officer, at least 52 weeks of full-time articles, or 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."

Rule 5-5(4) states:

"An articling student or applicant for admission who has practising experience as a member of the legal profession in a foreign jurisdiction may apply to the chief executive officer for an exemption from completing all or a portion of the CPLED program and the term of articles set out in subsection (1) by filing the required application and furnishing all documentation required by the chief executive officer."

Rule 5-5(5) states:

"In considering a request under subsection (4), the chief executive officer may refuse the exemption or allow it in full or in part, with or without conditions or restrictions."

Mr. Singh's case stands to be decided based upon Rule 5-5(4) and (5). The decision to grant an Articling exemption is discretionary. This discretion is not bounded or limited by Rule 5-5(1) which only allows abridgements of articles "in exceptional circumstances." It is through the broad discretion in Rule 5-5(4) and (5) that this Committee considers the within appeal.

Summary of Facts

Mr. Singh graduated from the Guru Nanak Dev University, Amritsar, Punjab with a Bachelor of Arts in 1998. He received a Bachelor of Laws from Maharishi Dayanand Saraswati University Ajmer, Rajasthan (India) in 2003. He has received a certificate of qualification from the National Committee on Accreditation ("NAC") of the Federation of Law Societies of Canada in January 2018.

Mr. Singh provided evidence that he was called to the Bar Punjab and Haryana, India on October 9, 2003. He practised for two years under a senior lawyer. He began his own firm in November 2005. He employs two other lawyers and two law clerks and describes his practice as including civil litigation, family law, criminal litigation, drafting wills, contracts, mortgages and sale deeds. He has an active practice in the local courts. He provided writing samples and other materials to support his Application. In support of his submission for an exemption to the Articling Provisions, he commented that the rules of evidence and procedure in criminal trials are similar between

Manitoba and Indian Courts as India is a common law jurisdiction. He referred to the more than 15 years of practice in which he has been engaged in India.

Mr. Singh's first contact with the Law Society of Manitoba was in late 2017. In his communications with the Law Society of Manitoba, he raised the question of his eligibility to work in Canada and was advised by the Director that before he would be able to begin any Articles in Manitoba, he would need to be eligible to work in Canada.

In March 2019, Mr. Singh requested an exemption from CPLED and the necessity to complete Articles.

The Director considered his Application and noted specifically that he had over 15 years of practice and experience in India commencing in 2003 and ongoing. He recognized that India had a substantive common law component to its legal system. He noted that Mr. Singh had no experience working in Canada in any capacity. He noted that there are differences in practices in the practice of law between India and Manitoba and decided that he must complete CPLED and decided to grant a partial exemption of 26 weeks from the Articling requirement.

It is from that decision that Mr. Singh appeals. He requested that he be granted a complete exemption from the Articling requirement. In his Appeal, he commented that he has demonstrated competence in legal practice and does not believe that the differences between the practice in India and Manitoba were sufficient to ground the requirement that he should participate in 26 the weeks of Articles.

In his Notice of Appeal, under "Grounds of Appeal," he stated:

"3. That before applying for the admission with exemption from CPLED and ARTICLING program to LSM, I had made number of inquiries from the law society of Manitoba. I am not residing in Canada and never visited this country, so firstly I had gone through the process of immigration of Canada and I found that for completing the articling, I have to obtain a work permit, for which LMIA is required from Employment and Social Development Canada. It means my principle has to obtain LMIA, which is to be issued by the ESDC in the occupation with shortage of worker as per E-mail immigration Annexure 'A' attached with this appeal. Everybody is aware that the finding of articling position is challenging not only in Manitoba, but also in other provinces of Canada, so the question of issuing LMIA by ESDC for completing articling does not arise as articling student position is not falling within the worker shortage occupations. In view of this situation I have applied to LSM with the hope that my full articling will be waive off on the basis of my practice experience with or without conditions."

He further states:

"4. That after getting the licence of practice from LSM (although with restrictions) I will be eligible for claiming additional points for Manitoba provincial nomination program as evident from Annexure 'B' and will be eligible for permanent residence in Canada. In the absence of exemption from articling, it is quite impossible for me to complete this admission process."

And:

"13. I humbly requested that the appeal may kindly be allowed and my application for exemption from articling requirement of 52 weeks may kindly accepted and the decision of learned Director may kindly be set aside to that extent. I am confident that with the completion of CPLED program, i [sic] will definitely become familiar with law of Manitoba and will familiar with the procedural law, which is different from India in my day to day practice in Manitoba. Any other condition may also be imposed, which is just and necessary, while granting the exemption from 52 weeks articling program."

The Law Society noted that he raised on the Appeal for the first time that an exemption was to assist him in meeting the requirements to become eligible to work in Canada. The Law Society suggested that he was asking that this be taken into account in assessing his exemption application. Mr. Singh denies this was his motive.

The Committee notes that in the above paragraph taken from his Notice of Appeal that Mr. Singh concedes that the laws and procedural laws differ between India and Manitoba, but believes he can address this through the imposition of conditions. He does not describe what those conditions might be, other than suggesting that he might be required to practice under the supervision of a lawyer for a certain period. He suggests that to "deny a competent lawyer to the public" by requiring him to Article is not in the public interest.

Analysis

Mr. Singh correctly points to Section 3 of the *Legal Professions Act*, C.C.S.M. c. L107:

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.

It is however also important to note the following provisions:

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.

The burden on the Director is thus to ensure that the Law Society's responsibility to protect the public is met by carefully considering the admission requirements of those who seek to practice law in Manitoba. In Applicant "A" decided on June 16, 2015 (Decision 2015 07 28, page 2), the Committee described this function as being "a gatekeeper for determining whom can practice law within the Province of Manitoba, consistent with its mandate of protection of the public interest". This means that an Application for an exemption must be assessed in consideration of the usual admission standards of educational requirements and where an exemption is requested to the admission requirements whether those requirements can be exempted or abridged while still

meeting the public interest in ensuring lawyers meet the standards for education, professional responsibility and competence. While the Law Society should not impose unnecessary steps on otherwise qualified persons, particularly those with significant work experience, the challenge in determining the requisite knowledge of professional responsibility and competence in internationally trained lawyers who have no experience at working in Canada is great and must always be assessed by what is necessary to protect the public interest.

The Act and Rules provide for persons being admitted to the practice of law if they have a Canadian law degree or failing that a Certificate of Qualification ("CQ") from the National Committee on Accreditation Program of the Federation of Law Societies of Canada. Obtaining a CQ does not end the assessment. Rule 5-4(1)(e) also requires that the person with the CQ "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."

Articling remains a fundamental aspect of admission to the Manitoba Bar. Professional responsibility is a combination of and application of the knowledge of Manitoba laws, together with the application of ethics and integrity. This is fundamental to the practice of law and requires an understanding of the legal landscape in which legal services are offered and a practical application of the relevant laws and how the Code of Conduct interacts with those responsibilities. The combination of the CPLED Program and the necessity of Articles ensures that these professional responsibilities and competencies are met.

Mr. Singh has no experience with Canadian law. He has not practised in Manitoba (or elsewhere in Canada). Mr. Singh's experience is predicated upon Indian law. He can make analogies between Canadian law and Indian law but only experience will permit him to appreciate and apply the important distinctions. The understanding of the details of law in this jurisdiction and the applicable legal principles together with the application of these principles to practice and the conduct expected of a lawyer are taught not just in a classroom but are gained through experience. That is the purpose of articles. For any lawyer who moves to this jurisdiction without any experience in it, understanding and applying the legal competencies and professional responsibilities which are necessary components of the practice of law in this jurisdiction will be achieved through Articles. The assessment of relevant experience will guide the decision-making in whether to grant an abridgement of Articles.

In this case, given the length of Mr. Singh's experience as a practitioner in India, the Director of Admissions and Membership concluded that, to achieve the requisite understanding of relevant competencies and responsibilities, he could complete 26 weeks of Articles in Manitoba rather than the 52 weeks as is the norm. As the Law Society noted, this is a balancing exercise based on the information provided.

In this Committee's view, 26 weeks is appropriate. Mr. Singh is an experienced lawyer in India. He does come from another common law jurisdiction. Both India and Canada can point to English law as a basis for their respective legal systems. This serves as a good foundation for Mr. Singh to pick up the nuances and details of practice in Manitoba. This will take time. To accept Mr. Singh's suggestion would be to allow him to immediately practise in Manitoba. He would immediately be able to represent clients without the important oversight that Articling provides. The Law Society must protect the public. Competence is an important touchstone for safe legal practice. Competence arises in applying law in the real world, which is what Articling does but under appropriate supervision so that the public remains protected.

Mr. Singh requested that he be admitted to practice with conditions, one of which he argued could be supervision. Supervision is a component of Articles. It will be inherent to the 26 weeks of Articles that Mr. Singh must serve before being called to the Bar.

It would be contrary to the Law Society's duty to "establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba" and the related Rules relating to admission to the Law Society to allow Mr. Singh admission to practice by substituting the necessity for Articles with a practice condition for supervision. If supervision is required it should be done through the Articling program. Mr. Singh was found to require Articles by the Director. The Committee agrees with the Director.

Mr. Singh's Notice of Appeal seemed to suggest that the Law Society should facilitate his immigration to Canada by waiving the need for Articles. This is seemingly behind his contention that he should be subject to supervision as opposed to Articling.

There is nothing in *The Legal Profession Act*, Rules or Regulations that would suggest that the Director may assist an Applicant with his immigration by waiving the need to Article. The Law Society's purpose is to protect the public. In making decisions surrounding admission and education, it must fairly apply its Rules in a manner that is not discriminatory and must consider fairly the qualifications of the Applicant for admission to the profession in light of its gate-keeping role. This does not include assisting or otherwise facilitating immigration. This is not a factor to consider. The Director was very clear in his communications to Mr. Singh that he would need to be eligible to work in Canada in order to Article.

Mr. Singh raises the concern that the Director fettered his discretion by, in essence, applying a pre-determined or set policy relating to the need to undergo Articles and one that was arbitrary. To be clear, this Committee is not aware of any such "policy" and considered this Appeal on its own set of facts. Further, there is no suggestion in any of the materials that the Committee reviewed to support that allegation, nor is the Committee of the opinion that a determination relating to the necessity to understand the environment in which the practice of law is conducted in Manitoba could be achieved without some understanding and presence within the legal environment in Canada or Manitoba. Requiring a period of Articles to achieve that understanding is reasonable.

The Appeal is dismissed.

Dated the 26th of October, 2019.



Marston Grindley



Sacha Paul



Helga D. Van Iderstine