



CANADA)
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PROVINCE OF SASKATCHEWAN)
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TO WIT)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT*, 1990
AND IN THE MATTER OF LOUIS MERCIER AND DANIEL DEMARIA,
STUDENTS-AT-LAW OF REGINA, SASKATCHEWAN**

**DECISION OF THE ADMISSIONS AND EDUCATION COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

Committee Members Present: Ron Kruzeniski, Q.C., Deb Schmidt, Susan Barber, Q.C.

Jurisdiction

1. Louis Mercier and Daniel DeMaria were Students-at-Law pursuant to the provisions of *The Legal Profession Act*, 1990, (“*Act*”) as well as the *Rules of the Law Society of Saskatchewan* (“*Rules*”), enrolled in the CPLED Course Program sometimes referred to in the *Rules* as the Bar Admission Program.

2. This proceeding is an appeal pursuant to Rule 159(7) in relation to a decision of the Director of CPLED to suspend Louis Mercier and Daniel DeMaria from the CPLED Course on April 6, 2009, as a result of allegations that they had breached the Professional Integrity Policy. The allegations against Mr. Mercier and Mr. DeMaria also represent a breach of the CPLED Program Agreement signed by these students.

The following *Rules* are relevant to this proceeding:

159. (1) The Bar Admission Program is divided into eight modules, and runs for eight months, while students-at-law continue their articling term.

...

(3) Attendance at all face-to-face sessions and participation online is mandatory.

...

(5) Students-at-law enrolled in the Bar Admission Program must complete all eight modules of the Program consecutively.

(6) Subject to sub rule (4), in order to be eligible for admission as lawyers, all students-at-law shall:

(a) attend and fully participate in all face to face sessions and participate fully in the online portion of the Bar Admission Program;

(b) satisfactorily complete and submit in a timely manner all assignments and competency evaluations;

(c) pass any exams set by the Bar Admission Program Director;

(d) upon completion of the Bar Admission Program deliver to the Executive Director an affidavit of attendance;

(e) comply with the Bar Admission Program's policy on professional integrity.

(7) The Bar Admission Program Director has discretion to suspend a student-at-law from the Program, and may take such action as is appropriate, including referral to the Law Society. There will be a right to appeal the Director's decision to suspend the student-at-law and such appeal will be made to the Committee.

160 (1) In order to pass the Bar Admission Program, a student-at-law shall:

.....

(b) submit on time and successfully complete all competency evaluations and assignments;

(c) pass any examinations set by the Bar Admission Program Director;

(d) comply with the policies set from time to time by the Society and Saskatchewan Legal Education Society Inc. regarding administration of the Bar Admission Program.

...

(4) Students-at-law who do not successfully complete the Bar Admission Program will be required to repeat the program.

(5) Students-at-law who are required to repeat the Bar Admission Program may apply in writing within 14 days of issuance of results to the Executive Director for a review.

(6) After a review pursuant to sub rule (5), the Executive Director may direct that:

(a) the student-at-law complete additional supplemental competency evaluations and examinations; or

(b) the student-at-law must repeat the Bar Admission Program.

3. This matter was heard on July 24, 2009, by the Admission and Education Committee with the above referred to members in attendance. Counsel for the parties had no objections

to the constitution of the Committee. The parties filed an amended Agreed Statement of Facts. As a result of the agreed facts, the appeal was not an appeal on the merits but was a hearing to consider the sanctions. Mr. Mercier and Mr. DeMaria in the agreed facts were agreeing to the allegations and thus, all that was left for the Committee to do was determine the consequences.

4. The Committee heard submission from Mr. Huber on behalf of the Society, Ms. Moser on behalf of Mr. Mercier and Mr. Johnson on behalf of Mr. DeMaria. The Committee reserved its decision following the hearing.

Background

5. The CPLED program is one of the cornerstones of the qualification process in order to be admitted as a lawyer in Saskatchewan. The 2008-2009 CPLED Program ran from September 15, 2008 through to April 24, 2009, and was made up of a combination of three Face-to-Face and five Online Modules designed to test the competence of prospective lawyers in a variety of areas. Modules #1, #4 and #8 are Face-to-Face exercises dealing with Chambers Advocacy and Interviewing Skills and Negotiations respectively. Modules #2, #3, #5, #6, and #7 are Online Modules dealing with Debtor Creditor, Wills and Estates/Family Law, Real Estate, Business and Civil Litigation.

6. The Online Modules are intended to be completed by the student on their own time. Each Online Module is four weeks long and is comprised of four units including three Assignments and one Competency Evaluation. Each unit has a client file, background readings and a learning exercise, which assist the students in preparing for each Assignment and the culminating Competency Evaluation. One week is allotted to complete each unit within a Module and each unit within a Module must be completed within the allotted week. Students are required to assimilate information and facts and perform necessary research in order to successfully complete the Assignments and Competency Evaluations.

7. Support for each student is available through the use of an Online Learning Facilitator, usually a lawyer volunteer practicing in the specific area of law. In addition to

the Online Learning Facilitator, CPLED students have access to a comprehensive set of procedural and substantive resource materials as well as a variety of other reference materials.

8. In order to successfully complete the CPLED program, all students must complete all Assignments and Competency Evaluations with a passing grade of “Competency Demonstrated”. In relation to the Competency Evaluations, grades are assessed in a variety of areas (sometimes up to 20) ranging from spelling, grammar and organization to a student's ability to identify any relevant facts and legal issues. Each area of assessment is assigned a score from zero to three with zero representing “no demonstration of skill or law” and three representing “exceeds basic level of competency”. These scores are tallied, weighted and then converted to a percentage. The passing grade is 60%. CPLED administrators have the ability to grant an “Administrative Pass” to those students who have demonstrated a basic level of competency even if their numeric grade does not exceed 60%.

Particulars of Conduct

9. On February 3, 2009, Louis Mercier contacted Corina Farbacher, Director of the CPLED program, and advised that he and another articling student at Merchant Law Group in Regina, Daniel DeMaria, had been sharing answers since roughly Module #3 of the CPLED Course. On that date, both students were in the process of completing Module #5, which was due on February 6, 2009.

10. There are no allegations of collaboration in relation to Modules #1 and #4, which were the Face-to-Face Modules. There is also no evidence of collaboration in relation to Modules #2, #6, #7 or #8. Mr. Mercier and Mr. DeMaria completed modules #6 and #7 in the normal course while an investigation in relation to their conduct was completed. Both were suspended prior to the commencement of Module #8, a Face-to-Face Module, but obtained a stay in relation to the effect of the suspension and completed Module #8 “provisionally” pending a decision in relation to this appeal. Online Modules #3 and #5 are therefore the focus of this proceeding.

11. All online Modules and Competency Evaluations include the following statement in the online instructions:

“By submitting this work to CPLED, I certify that it is my own original work and that I have complied with CPLED’s Professional Integrity Policy. I am aware of the consequences of any breach of the Professional Integrity Policy.”

12. In relation to Modules #3 and #5, Mr. Mercier and Mr. DeMaria collaborated in various ways. Collaboration often occurred in the form of Mr. Mercier providing his draft or partly completed Assignments and Competency Evaluations to Mr. DeMaria. Mr. DeMaria would review the work and make corrections or suggestions for changes thus, benefitting Mr. Mercier. Simultaneously, Mr. DeMaria gained a significant benefit by reviewing Mr. Mercier’s draft or partly completed Assignments and Competency Evaluations. Mr. DeMaria only finished one or two Assignments in Modules #3 and #5 without first having seen Mr. Mercier’s work. CPLED anticipates that the time required for each Assignment and Competency Evaluation is 10-15 hours. On average, Mr. Mercier spent 15 hours on each CPLED Assignment and Competency Evaluation. In contrast, Mr. DeMaria’s relationship with Mr. Mercier allowed Mr. DeMaria to usually spend less than 2 or 3 hours on any CPLED Assignment. As a result of the relationship and exchange of work with Mr. Mercier, Mr. DeMaria was also able to complete the Assignments and Competency Evaluations much more quickly. Having Mr. Mercier’s work helped Mr. DeMaria to prepare Assignments and Competency Evaluations that were more organized and succinct than Mr. Mercier’s, in a fraction of the time recommended by CPLED. With the exception of two Assignments in Modules #3 and #5 Mr. Mercier and Mr. DeMaria received roughly, the same marks on their Assignments and Competency Evaluations.

13. Exchanging Assignments and Competency Evaluations violates both the original and amended Professional Integrity Policy and the CPLED Program Agreement.

14. In addition to the exchange and correction of Assignments and Competency Evaluations mentioned above, Mr. Mercier and Mr. DeMaria often engaged in discussions regarding the completion of Assignments comprising Modules #3 and #5 and the Competency Evaluation in Module #3. The conversations would take place in person and via

email or instant messaging. Both Mr. Mercier and Mr. DeMaria benefitted from these discussions.

15. Revealing or providing work product and providing this type of compositional assistance to another student violate both the original and amended Professional Integrity Policy.

Summary

16. The facts agreed to represent the following breaches of the spirit and letter of the Professional Integrity Policy by Mr. Mercier and Mr. DeMaria:

Louis Mercier

- a) Revealing or providing the content of all Assignments and the Competency Evaluation to Daniel DeMaria in relation to Module #3;
- b) Revealing or providing the content of all Assignments and the Competency Evaluation to Daniel DeMaria in relation to Module #5; and
- c) Representing Daniel DeMaria's substantial editorial or compositional assistance on all Assignments in Modules #3 and #5 and the Competency Evaluation in Module #3 as his own work.

Daniel DeMaria

- d) Reviewing the content of Louis Mercier's Assignments and Competency Evaluations in relation to Modules #3 and #5 thereby deriving substantial personal benefit;
- e) Plagiarizing all or part of Louis Mercier's Assignments in relation to Module #3 and Module #5 in form or content;
- f) Providing substantial editorial or compositional assistance to Louis Mercier on his Assignments in relation to Module #3 and Module #5 thereby deriving substantial personal benefit; and
- g) Providing substantial editorial or compositional assistance to Louis Mercier on his Competency Evaluation in relation to Module #3 and thereby deriving substantial personal benefit.

Professional Integrity Policy

17. In addition to being governed by the Rules, students must also adhere to the policies set in relation to the CPLED Course, specifically the Professional Integrity Policy referenced

in Rule 159(6)(e). That policy underwent an amendment part way through the 2008-2009 CPLED Program. The original policy was in effect until December 31, 2008 and the amended policy was in effect from January 1, 2009.

18. The original Professional Integrity Policy for the 2008-2009 CPLED Course provides in part as follows:

Students must complete all assignments, competency evaluations and examinations with professional integrity. All assignments, competency evaluations and examinations must be the **student's own original work**. Examples of violations of this policy on professional integrity include:

1. Copying, paraphrasing or plagiarizing all or any part of a current or former student's assignments, competency evaluations or examinations in form, in content, or with only minimal changes.
2. Incorporating all or any part of an assignment, competency evaluation or examination prepared by current or former students, or using "model" answers.
3. Obtaining or ascertaining the content of an assignment, competency evaluation or examination before the content is officially available.
4. Revealing or providing the content of an assignment, competency evaluation or examination to any other person.
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5. Representing another's substantial editorial or compositional assistance on an assignment, competency evaluation or examination as a student's own work.

Plagiarism or any form of cheating will not be tolerated.

19. The timing of the policy change means that the issues surrounding Module #3 are governed by the original policy and the issues surrounding Module #5 are governed by the amended policy. The only change to the policy in question was in relation to clause 4 to remove the reference to Assignments. Communicating with other students in relation to the content of Assignments was not allowed prior to January 1, 2009. Even after January 1, 2009, students were still bound by the remaining provisions of the Professional Integrity Policy in relation to Assignments, specifically that they were still required to complete all of their own work. Sharing of work product is still prohibited.

20. Both the new and old policies prohibit any communication or collaboration whatsoever in relation to Competency Evaluations which must be completed independently by each student.

CPLED Program Agreement

21. Upon each student's entry into the CPLED Program, they are required to sign the CPLED Program Agreement. This agreement includes the following clauses:

- “(a) I will be bound by CPLED's Professional Integrity Policy;
- (b) All work I submit to CPLED will be my own original work;
- (c) I will not lend, give or sell my CPLED work or materials to any other students, prospective students or individuals. If I am found to have participated in another student's plagiarism, I may be subject to disciplinary action by CPLED or the Law Society of Saskatchewan;
- (d) Plagiarism is not tolerated by CPLED and may result in investigation, suspension, failure in the program and disciplinary action by CPLED, or referral to the Law Society of Saskatchewan for investigation and disciplinary action.”

Integrity

22. In 2007, the Law Society celebrated 100 year of being a Law Society in Saskatchewan. The theme for the year was “100 Years of Integrity”. This was a reflection of the Society's and the members' commitment and belief in a lawyer being part of a profession of integrity. The public expects integrity at all times and all members require it in order to perform their professional duties. Any breach of integrity by a lawyer or student-at-law, must be, taken very seriously. The facts here give the Committee serious concern, particularly given that Mr. Mercier and Mr. DeMaria have not been admitted to the Bar. These individuals have let down the entire profession, past and present members. They have acted in a way that causes the public to question the integrity of all lawyers.

23. The Committee considers the actions of these two students to amount to a serious breach of integrity. The Committee accordingly, has to fashion a sanction that is appropriate to the breach, considering any mitigating factors.

24. In attempting to balance matters, it is necessary to inquire as to whether there are any mitigating circumstances. One such circumstance is that Mr. Mercier self-reported. He did this on his own initiative. It was pointed out at the hearing, that if he had not done this, the hearing would not have taken place. The Committee infers from this self-reporting that Mr. Mercier was truly troubled by what had taken place. In Ms. Moser's submission, she indicated Mr. Mercier was very remorseful and as part of any sanction, he was prepared to speak to the next Bar Admission Course about cheating. This is an offer that reflects some remorse and courage.

25. It is noted that Mr. DeMaria did not self-report although his counsel did indicate that he is remorseful.

Other cases

26. There have not been many such cases in Canada. Counsel refers to an Alberta case, a summary of which is given below.

The *Law Society of Alberta v. Chantal Cattermole* was a discipline proceeding after Ms. Cattermole was expelled from the CPLED Course for reviewing another student's work in relation to one assignment. Ms. Cattermole was fired from her job as a result of the incident. Her completion of articles was delayed by two years by the time the discipline matter was concluded. Given the impact upon Ms. Cattermole, the delay that she had suffered and extensive mitigating circumstances, she received a reprimand together with an Order for costs. Mitigating circumstances, in this case, included the death of her father and massive family upheaval immediately prior to her decision to cheat, as well as psychological problems flowing there from. The Committee stated that but for the mitigating factors; they would have punished this breach of ethics by giving either a lengthy suspension or disbarment.

27. The discussion in *Cattermole* included the following remarks starting at paragraph 28:

“It is clear from the evidence and the admissions that Ms. Cattermole is guilty of conduct that discredits the profession and is deserving of sanction. If the public and other lawyers cannot rely on the honesty and integrity of a lawyer, the entire underpinnings of the legal profession are at risk. Next to stealing, cheating and lying are the most egregious activities a lawyer can engage in. It also strikes at the foundation of the CPLED Course as that course has been changed such that a large proportion of the courses and evaluations is now conducted online and the integrity of the system depends, to a large extent, on students being ethical and submitting their own work.”

28. In the case at hand, there were no mitigating circumstances similar to those brought to the Committee’s attention such as a death in the family.

Considerations

29. The Committee considers requiring Mr. Mercier and Mr. DeMaria to redo the entire CPLED Course as somewhat wasteful of their time as well as that of the program. Noting their performance on modules #3 and #5, the Committee sees some value being gained by requiring them to repeat these two modules. If there are fees payable for repeating two modules, Mr. Mercier and Mr. DeMaria should be required to pay those fees.

30. Mr. Mercier offered to speak to the next Bar Admission class. The Committee believes this is a good idea. It shows remorse and a willingness to assist others. The Committee suggests that Mr. Mercier contact the Director of CPLED to arrange this and request a letter from the Director of CPLED to the Admissions and Education Committee reporting on the presentation to the class. If such a presentation were not possible, the Committee would ask Mr. Mercier to write an essay regarding lessons learned from this matter and file it with his application for admission.

31. The Committee will also require Mr. DeMaria to write an essay indicating what he has learned from this matter. This essay should be filed with his application for admission.

32. The Committee had to consider the date when Mr. Mercier and Mr. DeMaria would be eligible to be admitted to the Law Society. Obviously, neither would be eligible to apply for admission until they have successfully completed modules #3 and #5. Further, the

Committee feels that it is necessary to recognize that Mr. Mercier self reported. Thus, Mr. Mercier's date for admission to the Law Society is set at one month after successful completion of modules #3 and #5 of the CPLED Course. Mr. De Maria's date for admission to the Law Society is set at three months after successful completion of modules #3 and #5.

33. The Committee also considers that a fine of \$250 is appropriate and each student should contribute to the costs of the hearing. Each is assessed a cost of \$500. Each is required to pay the fine and costs prior to the application for admission.

34. The Committee considers it appropriate that a note be placed on each student's file at the Law Society with a copy of this decision for the information of the Admission and Education Committee when assessing each of the applications for admission, in the event that the Admission and Education Committee determines that any specific requirements ought to be prescribed as to further ethics study or courses in the area of professional responsibility.

Conclusion

35. In summary the Committee orders:

- (a) Mr. Mercier and Mr. DeMaria are required to take modules #3 and #5 again, to do all assignments in those modules, to write the competency tests for those modules and to pay the fees for those modules.
- (b) That each of Mr. Mercier and Mr. DeMaria write an essay on the lessons learned regarding cheating and provide a copy of the essay with the application for admission. In lieu of that, Mr. Mercier may make a presentation to the current Bar Admission class and submit a copy of his presentation, plus a letter from the Director or CPLED commenting on his presentation (assuming one is available), with his application for admission.
- (c) A fine of \$250 each is payable prior to the application for admission.
- (d) Costs of the proceeding and hearing of \$500 each is payable prior to the application for admission.

- (e) Mr. Mercier is eligible to apply for admission as a member one month after he has successfully completed modules #3 and #5.
- (f) Mr. DeMaria is eligible to apply for admission as a member three months after he has successfully completed modules #3 and #5.
- (g) A note is to be placed on each student's file with a copy of this decision for the information of the Admissions and Education Committee reviewing their applications for admission in the event the Admissions and Education committee determines that any specific requirements ought to be prescribed as further ethics study or courses in the area of professional responsibility.

Dated August 18, 2009

Signed on behalf of the Admissions and Education Committee



Ronald J. Kruzeniski. Q.C.

ADDENDUM

Committee Members Present: Ron Kruzeniski, Q.C., Deb Schmidt, Susan Barber, Q.C.

Jurisdiction

1. The Admissions and Education Committee (the Committee) rendered its decision on August 17, 2009. After that date, the Committee was contacted by legal counsel for the Law Society indicating that some changes had been made to the CPLED Course. It was agreed the Committee would reconvene. This was done by conference call on August 25, 2009. Mr. Johnson, Ms. Moser and Mr. Huber were present. Mr. Mercier and Mr. DeMaria were present and Mr. Sam Bergerman, Director of CPLED was also present. No one had any objection to proceeding in this manner.

Change in Facts

2. Submissions were made by each counsel and Mr. Bergerman commented on the plans for the CPLED Course for 2009-2010.

3. It became clear that the Committee and legal counsel did not know certain facts on the date of the hearing.

4. The new facts are:

a. Module #3 was split into two Modules, #3 and #4, one on Family Law and one on Wills.

b. Module #5 was now Module #8 and that Module which started on February 9th (based on last year's schedule) now would start on April 13, 2010.

5. The Committee was of the opinion that the re-convened hearing was not to re-consider the original decision. It was to consider clarification of the original decision to meet the new reality faced by Mr. Mercier and Mr. DeMaria because of changes made at CPLED. Thus, the Committee was not going to change the original decision in any substantial way.

6. The Committee in its original decision did not consider it productive to have the students take the entire CPLED Course again. It also wanted a delay before the students could apply for admission. In the original decision, it was clear that Mr. Mercier could not have applied for admission earlier than about March 9th and Mr. DeMaria on May 9th, 2010. Both would have had to wait until they successfully completed the Modules.

7. The Committee felt the students had to accept the reality of the changes. The original decision involved the students taking Module #3. The Committee considers it appropriate that with the change in the CPLED Course, the students must take Module #3 and 4. Taking Modules #3 and #4, in no way affects the date they would be eligible to apply for admission.

8. In the original decision, the students had to successfully complete Module #5. They now have to complete Module #8, which starts April 13, 2010. The course changes have delayed the earliest date for admissions by approximately one month. The Committee is

prepared to recognize the unanticipated delay and thus, is prepared to reduce the eligibility time for applying for admission by two weeks.

9. Thus, Mr. Mercier will be eligible to apply for admission two weeks after he successfully finishes the CPLED Modules. Mr. DeMaria will be eligible to apply for admission two and one half months after he successfully completes the Modules.

10. Mr. Bergerman pointed out that it took about 30 days normally to mark the tests of a unit. This fact would have delayed the ability to apply for admission by another month. The Committee wanted to make the accommodation above and did not want to see the delay become greater. The Committee asks, through this decision, that Mr. Bergerman request the evaluator of Module #8 to mark Mr. Mercier and Mr. DeMaria's assignment first.

Conclusion

11. As a result of the submissions of counsel and the considerations above, the Committee by way of clarification of its original decision must complete the new Modules #3, #4 and #8. Mr. Mercier is not eligible to apply for admission until two weeks after he successfully completes the three modules and Mr. DeMaria is not eligible to apply for admission until two and a half months after he success fully completes the three modules.

Dated September 8, 2009

Signed on behalf of the Admissions and Education Committee



Ronald J. Kruzeniski. Q.C.



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**DECISION OF THE ADMISSIONS AND EDUCATION COMMITTEE FOR THE
 LAW SOCIETY OF SASKATCHEWAN**

**Committee Members Present: Ron Kruzeniski, Q.C., Deb Schmidt,
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Jurisdiction

1. Louis Mercier and Daniel DeMaria were Students-at-Law pursuant to the provisions of *The Legal Profession Act, 1990* (“*Act*”) as well as the *Rules of the Law Society of Saskatchewan* (“*Rules*”), enrolled in the CPLED program sometimes referred to in the *Rules* as the Bar Admission Program.

2. This proceeding was an Appeal pursuant to Rule 159(7) in relation to a decision of the Director of CPLED to suspend Louis Mercier and Daniel DeMaria from the CPLED course on April 6, 2009, as a result of allegations that they had breached the Professional Integrity Policies. The allegations against Mr. Mercier and Mr. DeMaria also represent a breach of the CPLED Program Agreement signed by all students.

3. This matter came on for hearing on July 24, 2009, in front of the Admissions and Education Committee with the above referred to members in attendance. Counsel for the

parties had no objections to the constitution of the Committee. The parties filed an amended Agreed Statement of Facts. As a result of the agreed facts, the appeal was not an appeal on the merits but was a hearing to consider the sanctions. Mr. Mercier and Mr. DeMaria in the agreed facts were agreeing to the allegations and thus, all that was left for the Committee to do was determine the sanction or consequences.

4. The Committee made its decision dated August 17, 2009, which decision was forwarded to all parties. The Law Society proceeded to place the decision on its web site. Mr. Johnson on behalf of Mr. DeMaria requested that the decision be removed at least until he had an opportunity to address the Committee on publication of decisions. Mr. Huber arranged for the decision to be temporarily removed. Mr. Johnson on behalf of Daniel DeMaria requested an opportunity to speak to the Committee regarding publication of the decision. Mr. Mercier did not make a similar request. This matter was heard by the Committee consisting of the above named members on November 27, 2009. Mr. Huber, Mr. Johnson and Mr. DeMaria were present. Mr. Johnson made no objection to the reconvening or constitution of the Committee.

Rules

The relevant Rule of the Law Society in this case is 230. Relevant portions are quoted below.

230...

Attendance at the Hearing and Right to Counsel

(10) The applicant:

- (a) shall, unless the Chairperson otherwise orders, personally attend the entire hearing; and
- (b) may appear with counsel.

Public Hearing

(11) Every hearing shall be held in public unless the Committee determines, in the public interest, that a specific individual or the public generally may not be present at part or all of the hearing.

Transcript

(12) All proceedings at a hearing shall be recorded by a Court Reporter and a person may obtain, at his or her expense, a transcript of any part of the hearing, which he or she was entitled to attend.

...

Procedure at Hearing

(14) Subject to the *Act* and these *Rules*, the Committee may determine the practice and procedure to be followed at a hearing.

Decision of the Committee

(15) The Committee's decision shall be by majority vote.

(16) When the Committee gives written reasons for its decision, it shall take all reasonable precautions to avoid including in those reasons any information before it that is confidential or subject to a solicitor and client privilege.

Mr. Johnson in his submission referred to *Rules*, which related to discipline. The Committee felt these sections did not apply to this case.

The above quoted Rule does apply to the case at hand.

Rule 230 clearly provides that the hearing is open to the public and transcripts of the hearing are available to any person that is entitled to attend the hearing. The issue then becomes what should happen after it is determined that the hearing is open.

The Committee's opinion is that the actual written decision has to be considered as part of the hearing. Subsection (16) of the *Rules* clearly contemplates that the decision is public with a requirement that the Committee attempt to remove confidential information. In addition, an open or public hearing with a decision that is not public seems rather ridiculous in concept. The Committee believes that Rule 230 contemplates an open hearing and implies a decision open to the public

The Committee felt that if, for example, the media were at the hearing and later requested a copy of that decision, a refusal to provide that decision to the media would create a very confusing result. The same reasoning would apply if a citizen entitled to be at the hearing later requested a copy of the written decision. Once the decision is provided to the media or a member of the public, either would be free to distribute that decision in any way they wished. They could do a news report, write an article or scan it and put it on the internet.

If the hearing and decision is public, then the only issue we are considering is the degree of distribution by the Law Society. This issue has to be decided knowing that the public is free to distribute a copy of the decision in any manner. For this Committee to say the decision is public and the public can distribute it, but the Law Society cannot place it on its web site when everyone else could, does not seem to be a reasonable or practical approach.

For the above reasons, the Committee has decided that a hearing under Rule 230 is public and the related decision is also public. No restrictions on publication will be imposed in this case. The Committee acknowledges that future committees may make decisions in individual cases but the Committee hopes future committees always lean towards an open approach.

The Committee noted that the Law Society does not have a policy as to how long a decision will be on its web site. Although the Committee makes no direction in this case, it encourages the Law Society to develop some policy concerning maintenance of information such as that after a certain number of years if a case decision is to stay on the web site, the names will be replaced with initials.

In summary, the Committee believes it was in the public interest that the original decision and this addendum be available to the public and placed on the Law Society's web site.

Dated December 11, 2009

Signed on behalf of the Admissions and Education Committee



Ronald J. Kruzeniski, Q.C.