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Feds ordered to cover articling students' law society membership fees

By Glenn Kauth, Legal Feeds Blog, Canadian Lawyer, March 30, 2015

The federal government must cover the law society membership fees for its articling students, a labour relations adjudicator has ruled.

Since 2013, the Association of Justice Counsel has been battling to have the government cover the fees for all of its articling students after finding a patchwork of practices across the country.

In a decision this month, adjudicator George Filliter found in part in the union's favour.

“In my view, this confirms the requirement of the employer to pay any and all fees necessary for the student to be enrolled as a law student or an articling student in their respective law society,” he wrote, citing the language in job postings that refer to the different articling provisions of the respective law society.

“This demonstrates that membership in a law society is a professional qualification ‘required by the employer for the performance of any duties and/or responsibilities assigned,’” wrote Filliter.

At issue was s. 28.01 of the association's collective agreement that says the government will reimburse lawyers for their membership in a professional organization when it's necessary to maintain a professional qualification required by the employer. The collective agreement also notes the term “lawyers” also includes articling students.

In 2013, the government denied the union's grievance on the issue, arguing articling students don't have to maintain a professional qualification as they're in fact candidates rather than members of a law society.

While Filliter ruled in favour of the union on the issue of law society membership fees, he rejected the proposition that the government should also cover the costs of bar courses and examinations.

“In my view, clause 28.01 of the collective agreement cannot be interpreted to impose such an obligation on the employer,” he wrote. “Again, looking at the posting notices, students apply for these positions with the full knowledge that these fees are not going to be reimbursed by the employer and that they are therefore responsible for the payment to the professional association.”

→ “That’s by far the largest fee,” says Len MacKay, president of the union.

MacKay notes there has also been a patchwork of practices across the country on that issue as the government uses payment of the course and examination fees as a recruiting tool for individual candidates.

“It’s an individual, sort of applicant basis,” he says.

The union did win another partial victory on whether the government must cover articling students’ fees for their call to the bar.

“When students are not offered employment post-articling by the employer, the employer is not required to pay bar fees,” he wrote. “However, in those instances where a law student is offered a permanent position with the employer as counsel, I reach a different conclusion, as such call to the bar fees would be necessary for the employee to maintain his or her recently acquired professional qualification.”

MacKay welcomed that aspect of the decision.

“Outside of that, we’re also happy that they sided with us on the hire backs,” he says.

Besides the fee issues, Filliter’s ruling also included some noteworthy facts on the government’s cuts to its articling program. In statistics on the number of articling students across the country, Filliter showed it has made significant cutbacks since 2010.

At the Ontario regional office, for example, the number of positions in 2013 was nine, down from 18 in 2010. At the northern regional office, there were no positions in 2013 versus two in 2010. At the prairie regional office, the number of positions fell to six in 2013 versus 14 five years ago.

“That’s one of the programs that have suffered,” says MacKay, referring to the government’s general climate of budgetary and staff cutbacks in recent years as it made efforts to eliminate the deficit. While he notes articling is often an easy target for cuts, he says he has heard there’s an intention to return hiring to previous levels.

Filliter’s decision comes as law students in Ontario are celebrating another victory on the financial front. In a news release today, the Law Students’ Society of Ontario noted the Law Society of Upper Canada had relented on its plan to provide licensing materials in electronic format only, something the group said would mean an estimated \$100 in required printing costs.

According to the law student group, the law society has now said it will provide hard copies to students who request them.

“This is great news for law students across Ontario, and the LSSO commends the law society for its reconsideration of this decision,” said Ryan Robski, president of the law students’ society.