



Decision No. 20160114

Date of Decision: January 14, 2016

IN THE MATTER OF: *THE LEGAL PROFESSION ACT*, CCSM c L107

BETWEEN: The Law Society of Manitoba

-and-

Avnish Jolly, Student

Date of Hearing: January 14, 2016

Panel: Anita Southall (Chair)
Karine Pelletier (Member)
Jim Wolfe (Public Representative)

No appearances

IN THE MATTER OF Avnish Jolly, Student

-and-

IN THE MATTER OF THE LEGAL PROFESSION ACT

PANEL: Anita Southall (Chair)
Karine Pelletier (Member)
Jim Wolfe (Public Representative)

HEARING DATE: January 14, 2016

APPEARANCES: None

DECISION

Re: An Appeal by Avnish Jolly of a CPLED registration decision of the Director of Admissions and Membership of The Law Society of Manitoba dated November 12, 2015.

I. Introduction & Background

This appeal proceeded in accordance with Law Society of Manitoba Rule 5-28 and *The Fair Registration Practices in Regulated Professions Act* (Manitoba) section 7(1).

1. Avnish Jolly ("Mr. Jolly or the Student") obtained his law degree in India. He intends to practice law in Manitoba. The Federation of Law Societies of Canada National Committee on Accreditation (NCA) assesses credentials of foreign trained lawyers and sets the examinations to permit each candidate, on successful completion, to obtain a "Certificate of Qualification"(CQ). Mr. Jolly is required to satisfy the Manitoba entrance requirements for admission to the practice of law including satisfactory completion of articles and successful completion of the CPLED program, Manitoba's bar admission course.

2. Mr. Jolly applied to The Law Society of Manitoba (LSM) for admission as an articling student on May 11, 2015. In order to be admitted by the LSM Mr. Jolly was required to have his CQ. As an accommodation to students, The LSM has established a policy as set out in the CPLED Handbook permitting the Director of Admissions to waive full completion of the CQ designation before entering the CPLED program if all of the required courses have been completed and the student is awaiting marks. The policy states, "If the student is unsuccessful, the student may be removed from CPLED until in receipt of the certification of qualification and may or may not be given credit for completed CPLED modules."

3. At May 11, 2015, Mr. Jolly did not have his CQ. He was required by the NCA to be certified in four courses and to write examinations in three. He had passed two of the three exams, but with respect to the designated examination in Canadian Criminal Law he had attempted and failed the course twice. Mr. Jolly was scheduled to reattempt the exam for a third time in August 2015. At the time of his application, Mr. Jolly had not secured an articling position.

4. The Law Society's Director of Admissions & Membership (the Director) notified Mr. Jolly by letter of June 26, 2015 that he was not permitted to commence the 2015 CPLED program; he did not have his CQ and he had not secured articles. Mr. Jolly secured articles and reapplied. The LSM admitted Mr. Jolly into the CPLED program in August 2015, and in his notice of admission the Society reminded him in respect of the Criminal Law course "...should you fail that examination you may be removed from the CPLED Program. In addition, whether or not you receive credits for any modules completed will be in the discretion of the Director of Education."

5. Mr. Jolly failed his third attempt at the Canadian Criminal Law exam, receiving 18% as his exam mark. After three failures in the same course examination under the NCA process, a candidate must have special dispensation to write a fourth time subject to a remediation plan or the candidate must enroll to take the specific course at an approved faculty of law in Canada.

6. Mr. Jolly notified the Director of his failure in the examination. By letter of November 12, 2015 the Director revoked Mr. Jolly's enrollment in CPLED and removed him from the CPLED program. Mr. Jolly was told that he could continue his articles and the overall entrance criteria and timing were brought to his attention for his further consideration.

7. Mr. Jolly also appealed his NCA Criminal Law (third attempt) examination mark.

8. Mr. Jolly filed his appeal to the LSM Admissions and Education Committee on November 26, 2015, which was assigned to this sub-committee Panel for determination. Mr. Jolly wrote to the Director and asked for reconsideration. The Director denied his reconsideration request by letter of December 8th and Mr. Jolly wrote a letter dated December 18, 2015 to notify the Law Society that he wished his appeal to proceed.

9. Mr. Jolly indicated that he expected a decision regarding his NCA criminal law course appeal to be decided by mid-January, 2016. No decision had been made to the knowledge of the Appeal Panel by the appeal hearing date of January 14, 2016. No specific date for the appeal result was identified by the appellant and the pending result timing was indeterminate.

II. Materials Before the Appeals Sub-Committee Panel

The following materials were provided to the Panel in advance of the meeting, and the same materials were provided to the appellant:

1. Law Society of Manitoba Admissions and Education Department Booklet of Appeal of Decision of Admissions & Membership Re Avnish Jolly, containing:

- A. Application for Admission to the Manitoba CPLED Program submitted by Mr. Avnish Jolly on May 29, 2015.
- B. Request to waive requirement for Certification of Qualifications submitted by Mr. Jolly on June 24, 2015.
- C. Letter to Mr. Jolly from Mr. Richard Porcher, Director of Admissions & Membership, dated June 26, 2015, providing the decision to deny the request to waive the requirement for a Certificate of Qualification.
- D. NCA Assessment Completion report, prepared July 2, 2015.
- E. Re-submission of Application for Admission to the Manitoba CPLED and as an Articling Student by Mr. Jolly on July 13, 2015 with information as to his articling position with Victoria Lehman.
- F. Email dated August 12, 2015 from Kelly Jordanov to Mr. Jolly advising that Mr. Porcher approved Mr. Jolly's Application for Admission to the 2015-16 Manitoba CPLED Program and as an Articling Student.
- G. Letter to Mr. Jolly from Mr. Porcher dated November 12, 2015, providing the decision to remove Mr. Jolly from the CPLED program.
- H. Letter from Mr. Jolly dated November 26, 2015 together with a Notice of Appeal of the decision of November 12, 2015.

- I. Email exchange between Richard Porcher/Joan Holmstrom (Director of Education) and Mr. Jolly regarding Mr. Jolly's request to consider modules already completed and re-consideration of the November 12, 2015 decision. (November 26 - December 4, 2015).
 - J. Letter to Mr. Jolly from Mr. Porcher dated December 8, 2015, providing the decision on the request for re-consideration of decision of November 12, 2015.
 - K. Letter from Mr. Jolly received on December 18, 2015 requesting that the Law Society proceed with his appeal.
2. Written submission of the Law Society of Manitoba, by its counsel Rocky Kravetsky, dated January 7, 2016.

The appellant Mr. Jolly did not make a formal written submission. The appellant's submissions are to be found in his letter and Notice of Appeal filed November 26, 2015 and his letter of December 18, 2015.

All of the materials were reviewed by the Panel before it considered the issues and made its decisions. The Panel made an independent decision on all issues. No one who acted as a decision maker in the registration decision was involved in the Panel's appeal process and decision.

III. Standard of Review

The Panel has considered the submissions of the Law Society as to the proper grounds of appeal. Those submissions will be addressed herein below.

The Panel noted that pursuant to Rule 5-28(7), its options for determination of this appeal include that the Panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions. The Director is the CEO's delegate for these purposes.

The Panel finds that the standard of review for all of the issues on appeal is that of a fresh hearing where deference is not owed to the Director's decision either on findings of fact, application of the legislation to the admissions decision or the exercise of discretion. The Panel does acknowledge that the Director is a person of experience in admissions matters and as submitted by the Law Society, the Panel did not hear directly from the appellant, and has no information that was unavailable to the Director other than the updated CPLED evaluation information.

The Panel concluded that it could consider the matter afresh taking into account the reasons of the Director contained in the Director's removal decision letter of November 12, 2015 and the Director's reconsideration decision letter of December 8, 2015. Since the Panel could make any decision the chief executive officer (or her delegate) could have made, it was not limited to a simple correctness review.

The Panel finds that the Director had the jurisdiction to make the decision to revoke the Student's enrollment and to remove him from the CPLED program, and that pursuant to Rule 5-28 the Panel has the jurisdiction to hear this appeal and make the decisions set out herein.

IV. Relevant Excerpts from Applicable Legislation Rules and Policies

The jurisdiction of the Law Society of Manitoba to regulate admission to the practice of law in Manitoba is contained in *The Legal Profession Act*. The Society's duties include:

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.

Under the *Act* the benchers may make Rules to carry out the Society's duties. The Law Society's Rules are binding on everyone who seeks to practice law in Manitoba.

Rule 5 contains the provisions regarding admission to the Law Society as an articling student. Rule 5-4(1) states:

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)

Rule 5-5(1) sets out the conditions of completion of the CPLED program and the term of articles of an articling student:

Articling and CPLED program

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.

(AM. 04/04; 05/07; 10/08; 05/11; 06/15)

The waiver that may be granted of students awaiting NCA examination results is contained in the CPLED Handbook, as follows:

Page 7:

In order to participate in CPLED, the student must hold membership in the Law Society of Manitoba as an articling student and must also have a Canadian common law degree (Rule 5-4(1)) or a certificate of qualification from the NCA. A waiver of this latter requirement can be sought in writing in instances where an individual has completed all of the required examinations and courses prescribed by the NCA and is awaiting results.

Page 12:

Note: While internationally educated applicants are eligible for admission to the Law Society of Manitoba as Articling Students after they have received their NCA assessment of their qualifications and are registered to take or are awaiting results of examinations of courses prescribed by the NCA (Law Society Rule 5-4(1) (c) admission to CPLED will require participants to have the certification of qualification from the NCA before commencing CPLED. A waiver of this requirement may be available in limited circumstances upon written request if the student has completed all of the required courses and examinations and is simply awaiting results. If the student is unsuccessful, the student may be removed from CPLED until in receipt of the certification of qualification and may or may not be given credit for any completed CPLED modules.

The Fair Registration Practices in Regulated Professions Act applies to the admission into law in Manitoba. The *Act* requires that registration practices be transparent, objective, impartial, and fair. With respect to registration decisions and appeals therefrom the *Act* states:

Timely decisions, responses and reasons

6 A regulated profession must

- (a) make registration decisions within a reasonable time;
- (b) provide written responses to applicants within a reasonable time; and
- (c) provide written reasons to applicants within a reasonable time in respect of all
 - (i) registration decisions refusing to grant registration, or granting registration subject to conditions, and
 - (ii) internal review or appeal decisions,

including, where practical, information respecting measures or programs that may be available to assist unsuccessful applicants in obtaining registration at a later date.

Internal review or appeal

7(1) A regulated profession must provide an internal review of, or appeal from, its registration decisions within a reasonable time.

Submissions by applicant

7(2) A regulated profession must provide an applicant for registration with an opportunity to make submissions respecting any internal review or appeal.

How to make submissions

7(3) A regulated profession may specify whether submissions respecting an internal review or appeal are to be submitted orally, in writing or by electronic means.

Information on appeal rights

7(4) A regulated profession must inform an applicant of any rights that he or she may have to request a review of, or appeal from, the decision, and provide information about the procedures and time frames of a review or appeal.

Decision-maker

7(5) No one who acted as a decision-maker in respect of a registration decision may act as a decision-maker in an internal review or appeal in respect of that registration decision.

Schedule A to this decision contains a more extensive listing of relevant legislation, rules and policies.

V. Issues

Mr. Jolly's appeal was reviewed and liberally construed in his favour by the Panel as regards his requests for relief. The Panel therefore identifies the following issues for determination in accordance with the Notice Of Appeal:

- (i) Should a stay of the CPLED removal decision and a stay of the determination of this appeal be granted, pending the results of the NCA criminal law examination appeal?
- (ii) In the alternative and if a stay is not granted should the appeal be granted permitting Mr. Jolly to be reinstated in the CPLED program?

- (iii) In the further alternative if he is not successful, should Mr. Jolly be given credit for the CPLED modules he has successfully completed and for 12 weeks of articling that he has served when he is reinstated in the CPLED program?

VI. Discussion

Issue (i) Stay of Director's Decision / Stay of Appeal Hearing

The Panel interpreted Mr. Jolly's request for the appeal to be in part a request that he be reinstated into the CPLED program and that this appeal not be determined until the results of his NCA examination appeal were made known.

The Panel considered the merits of the pending NCA appeal and the merits of this CPLED appeal if the Student's mark of 18% on the criminal law examination remained unchanged. The Panel also noted the Student's mark in the criminal law examination had continued to worsen over successive attempts: May 2014 — 26%, January 2015 — 20% and August 2015 — 18%.

The Panel weighed the effect of the Student's removal from the CPLED program including the possibility and practicality of having to re-apply again if and when he qualifies, against the responsibility of the Law Society to protect the public interest by ensuring that the standards of education and professional competence are met by persons seeking admission to the practice of law in Manitoba.

The Panel held that the balance of convenience on the stay request favours denial of the stay. Mr. Jolly was granted the waiver and permitted to commence CPLED only on the conditional basis that he was scheduled to take or awaiting his result for the NCA criminal law examination. When that condition no longer existed and he failed his third time, he did not meet the CQ requirement for enrollment and he no longer met the condition under which his discretionary admission had been granted. The merits of this CPLED appeal were found to be weak.

Further, the Panel found that Mr. Jolly had an extremely remote chance of success in his NCA examination appeal as it appeared that his chance of going from a mark of 18% to something over 50% was slim. With his previous criminal law examination marks all well below the passing grade and the mark continually going down in successive attempts, there is a clear indication that the Student does not currently demonstrate competence in the subject matter of certification.

The Student will be required to enroll to take the criminal law course at a qualified Canadian law school if he does not obtain permission to write a fourth time. At present, Mr. Jolly is some time away from having the required CQ to proceed further with his Manitoba admission requirements. As noted above, the merit of his NCA appeal also appears weak. The importance of the minimum threshold for admission to the Manitoba

CPLED program to ensure the delivery of legal services by competent professionals is central to protection of the public interest under the Law Society's legislation.

Although Mr. Jolly notified the Law Society that he expected his appeal results in mid-January 2016, the Panel was not provided with his appeal results by the date of its hearing on January 14th or with any updated information from the Student as to when the NCA would render a decision under its appeal process.

There was simply no basis upon which the Panel could permit Mr. Jolly to be reinstated in the face of these undisputed facts. There was also no basis in the circumstances to stay the determination of this appeal on the merits. Practically, Mr. Jolly has the right to reapply to the CPLED program and there is no irreparable harm suffered by him as a result of this decision that would weigh in his favour in granting a stay. The stay is therefore denied.

Issue (ii) Appeal — Readmission to CPLED

The Panel determined that in addition to the stay pending the NCA examination appeal result, Mr. Jolly was simply asking for the Director's decision to be overturned and that he be readmitted to the CPLED program.

As noted herein above, there is no merit to the Student's position on reinstatement given his failure to obtain a CQ designation in accordance with the Law Society of Manitoba's Rules. *The Legal Profession Act* gives the benchers of the Society the jurisdiction to make the Rules. The Rules are clear as to articling student admission requirements. Mr. Jolly did not qualify to be admitted to the CPLED program in August 2015, but did meet the condition that permitted the Director as the CEO's delegate to grant the waiver to accommodate the Student so that he could commence CPLED. The standing condition no longer existed when Mr. Jolly failed his third attempt at the criminal law exam. The Panel unanimously finds that under the transparent and impartial written admission requirements, the Student could not remain in the program.

Finally, Mr. Jolly was reminded when he was given notice in August 2015 of his admission to CPLED, under the waiver, that he may be removed if he failed the NCA examination. That notice is consistent with the clear wording of the CPLED policy contained in the CPLED Handbook.

Mr. Jolly has not obtained his CQ designation. He does not currently qualify to be in the CPLED program. His appeal of his removal from CPLED is denied.

Issue (iii) Credit for CPLED Modules and Articling Period

The Panel accepts the submission of the Law Society that there was no decision of the Director regarding credit for CPLED modules completed by Mr. Jolly and no decision of the Director regarding credit for articling time performed by Mr. Jolly. As a result, there is no ability for Mr. Jolly to appeal on these grounds and to request relief on these matters as there were no decisions subject to appeal on these matters.

The appeal and alternative relief on these grounds is premature; Mr. Jolly may in future choose to seek these credits and the criteria for granting these credits will then have to be reviewed by the Law Society. The Panel therefore finds that it does not need to address these matters.

VII. Decision

Mr. Jolly's request to be reinstated in CPLED and to have the appeal stayed pending the results of his NCA examination appeal was dismissed. Mr. Jolly's appeal and request for reinstatement in CPLED was dismissed. The request for CPLED modules credits and articling service credit was not a decision of the Director and was therefore not the proper subject matter of appeal.

January 27, 2016



Anita Southall, (Chairperson)



Karine Pelletier (Member)



Jim Wolfe (Public Representative)

No Appearance

Schedule A to Decision of Appeal Panel:
Hearing of January 14, 2016 In the Appeal of Student Avnish Jolly:
Excerpts of Legislation Rules and Governing Law Society Policies

The Legal Profession 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.

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.

General power to make rules

4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.

Rules are binding

4(6) The rules are binding on the society, the benchers, the members and everyone who practises or seeks the right to practise law under the authority of this Act, other than Part 5 (representation in highway traffic matters).

The Fair Registration Practices in Regulated Professions Act

C.C.S.M. c. F12

WHEREAS the health, safety, and quality of life of people in Manitoba depend on services provided by a wide range of professionals;

AND WHEREAS regulated professions are responsible for protecting the public interest by ensuring a high standard of professional practice;

AND WHEREAS the registration practices of regulated professions should be clear and well-defined and ensure that all applicants receive fair consideration;

AND WHEREAS Manitoba is committed to an informed, fair and systematic approach to improving professional recognition processes for skilled individuals educated outside Canada;

PART 1

INTRODUCTORY PROVISIONS

Purpose of this Act

1 The purpose of this Act is to help ensure that regulated professions and individuals applying for registration by regulated professions are governed by registration practices that are transparent, objective, impartial and fair.

Definitions

2 The following definitions apply in this Act....

"registration" means the granting of membership, with or without conditions, in a regulated profession, whether by registration, licensure, admission, certification, enrolment or other means, regardless of the terminology used by the regulated profession. (« inscription »)

"registration decision" means, regardless of the terminology used by a regulated profession, a decision

(a) to grant registration to an applicant;

(b) to not grant registration to an applicant; or

(c) to grant registration to an applicant subject to conditions. (« décision en matière d'inscription »)

PART 2

FAIR REGISTRATION PRACTICES CODE

GENERAL DUTY

General duty

4 A regulated profession has a duty to provide registration practices that are transparent, objective, impartial and fair. ...

...

Timely decisions, responses and reasons

6 A regulated profession must

(a) make registration decisions within a reasonable time;

(b) provide written responses to applicants within a reasonable time; and

(c) provide written reasons to applicants within a reasonable time in respect of all

(i) registration decisions refusing to grant registration, or granting registration subject to conditions, and

(ii) internal review or appeal decisions,

including, where practical, information respecting measures or programs that may be available to assist unsuccessful applicants in obtaining registration at a later date.

Internal review or appeal

7(1) A regulated profession must provide an internal review of, or appeal from, its registration decisions within a reasonable time.

Submissions by applicant

7(2) A regulated profession must provide an applicant for registration with an opportunity to make submissions respecting any internal review or appeal.

How to make submissions

7(3) A regulated profession may specify whether submissions respecting an internal review or appeal are to be submitted orally, in writing or by electronic means.

Information on appeal rights

7(4) A regulated profession must inform an applicant of any rights that he or she may have to request a review of, or appeal from, the decision, and provide information about the procedures and time frames of a review or appeal.

Decision-maker

7(5) No one who acted as a decision-maker in respect of a registration decision may act as a decision-maker in an internal review or appeal in respect of that registration decision.

Assessing qualifications

8(2) If a regulated profession makes its own assessment of qualifications, it must do so in a way that is transparent, objective, impartial and fair.

Reliance on third party to assess

8(3) If a regulated profession relies on a third party to assess qualifications, it must take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair.

Rules Of The Law Society Of Manitoba,

Adopted by the Benchers of the Law Society of Manitoba

October 31, 2002

Part 1

Interpretation

Definitions

1-2 In these rules, ...

"chief executive officer" means the chief executive officer of the society or an employee to whom the chief executive officer has delegated any of his or her powers, duties or functions;

Part 5

Protection of the Public

Division 1 Admissions

Definitions

5-1 In this division,

"appeals sub-committee" means the sub-committee of the admissions and education committee responsible for considering appeals of grades and admissions decisions made pursuant to the rules in this division; (ENACTED 05/12)

"articling student" means a person enrolled in the society's bar admission program and registered in the student register as an articling student; (ENACTED 05/07)

"bar admission program" means the society's pre-call licensing program; (ENACTED 04/04) **"committee"** means the admissions and education committee;

"CPLD program" means the Canadian Centre for Professional Legal Education program that operates as the society's bar admission program; (ENACTED 04/104)

"law student" means a person enrolled in a law degree program and registered in the society's student register as a law student; (ENACTED 05/07)

"NCA" means the National Committee on Accreditation of the Federation of Law Societies of Canada; (ENACTED 04/13)

"principal" means a practising lawyer who has been approved to enter into an articling agreement with an articling student.

Committee objectives

5-2 The role of the committee is to:

- (a) advise the benchers on policies relating to admissions and education issues;
- (b) consider appeals of grades and admissions decisions made pursuant to the rules in this division and conduct hearings as required; and
- (c) take any steps and delegate any authority necessary for the committee to carry out its responsibilities.

(AM. 05/07; AM. 10/07)

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)

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. (AM. 04/04; 05/07; 10/08; 05/11; 06/15)

Grades

5-10(1) An articling student must receive a grade of competency demonstrated, competency not yet demonstrated, deferred or incomplete on competency evaluations, assignments and examinations.

(AM. 04/04; 05/07)

Successful completion of CPLED program

5-10(2) Subject to rule 5-5(3) and subsection (4), an articling student will have successfully completed the CPLED program if he or she receives a grade of competency demonstrated on all competency evaluations and examinations.

(AM. 04/04; 05/07)

Supplemental competency evaluations and examinations

5-10(3) An articling student who fails to receive a grade of competency demonstrated on a competency evaluation or examination may complete a maximum of three supplemental competency evaluations or examinations. A student who exceeds the maximum number of competency evaluations or examinations must repeat the CPLED program. (AM. 04/04; 05/07; 06/15)

Criteria for successful completion

5-12(1) Subject to subsection (2) an articling student is eligible for call to the bar if he or she:

- (a) has completed the term of articles under rule 5-5(1);
- (b) has obtained a satisfactory certification from his or her principal;
- (c) has successfully completed the CPLED program or received an exemption under rule 5-5(3);
- (d) continues to be of good moral character and a fit and proper person to be called to the bar; and
- (e) has paid the required fees.

(AM. 04/04; 05/07; 10/07; 04/13)

5-12(2) A person approved for admission as an articling student under rule 5-4(1)(c) must be a recipient of a certificate of qualification from the NCA to be eligible for call to the bar. (ENACTED 04/13)

5-13 An articling student who does not successfully complete the CPLED program may apply to the chief executive officer for permission to repeat the program or any part of it, but is only eligible to repeat the program or any part of it twice. (AM. 04/04; 05/07; 10/07; 05/14)

Appeal of admissions decisions

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 to appeal. The appeal process will be governed by guidelines adopted by the benchers. (ENACTED 10107) (AM. 04/10; 05/12)

Appointment and composition of panel

5-28(2) The chairperson of the committee must select a panel of three members of the appeals sub-committee to consider any appeal made under subsection (1). One of the panel members must be a public representative. Two of the panel members must have current practising certificates, unless it is not reasonably practicable to have two practising members on the panel, in which case the chairperson may appoint one practising member and one non-practising or inactive member to sit on the panel. (ENACTED 10/07) (AM. 05/08; 05/12)

Hearings

5-28(3) A panel must conduct an appeal based on a consideration of written submissions and other relevant materials, except where the chairperson of the committee directs or the appellant requests an oral hearing. During an oral hearing, neither the appellant nor any other person may give oral evidence, except with leave of the appeal panel and then only in such exceptional circumstances as the appeal panel may determine. The testimony of an appellant or any other person at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement. An oath must be administered by the chairperson of the panel. (ENACTED 05/08) (AM. 05/12; 05/14)

Hearing to be public

5-28(4) An oral hearing convened under sub-section (3) must be open to the public unless the panel makes an order under sub-section (5). (ENACTED 06/09)

Exclusion of members of public

5-28(5) A panel considering an appeal under sub-section (3) may make an order excluding members of the public from a hearing if it thinks that:

- (a) exclusion is necessary to prevent the disclosure of information that is subject to solicitor-client privilege; or
- (b) the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed. (ENACTED 06/09)

How and when order can be made

5-28(6) A panel may make an order under subsection (5) on its own motion, or on the application of any person having an interest in the information to be disclosed. The order or application may be made before the hearing begins or at any time during the hearing. (ENACTED 06/09)

Decision of panel

5-28(7) The panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions. A decision of the panel is final, except a decision to refuse to issue a practising certificate or a practising certificate free of conditions, which decision may be appealed to the Court of Appeal pursuant to section 76 of the Act. (ENACTED 05/08; AM. 06/09; 05/12)

Exception

5-28(8) Where the chief executive officer does not grant a person's abridgement request under rule 5-28.1(3), the person may appeal in writing to the chair of the committee within 14 days of his or her receipt of written confirmation of the decision and the right to appeal. The decision of the chair is final. (ENACTED 04/10)

CPLED Handbook

Page 7, Section 2 CPLED Program

In order to participate in CPLED, the student must hold membership in the Law Society of Manitoba as an articling student and must also have a Canadian common law degree (Rule 54(1) or a certificate of qualification from the NCA. A waiver of this latter requirement can be sought in writing in instances where an individual has completed all of the required examinations and courses prescribed by the NCA and is awaiting results.

Page 12, Section 6 (a) Legal Education

Note: While internationally educated applicants are eligible for admission to the Law Society of Manitoba as Articling Students after they have received their NCA assessment of their qualifications and are registered to take or are awaiting results of examinations of courses prescribed by the N.C.A. (Law Society Rule 5-4(1) (c) admission to CPLED will require participants to have the certification of qualification from the NCA before commencing CPLED. A waiver of this requirement may be available in limited circumstances upon written request if the student has completed all of the required courses and examinations and is simply awaiting results. If the student is unsuccessful, the student may be removed from CPLED until in receipt of the certification of qualification and may or may not be given credit for any completed CPLED modules.