



Decision No. 20180501

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

The Law Society Rule, 5-11(2),

AND IN THE MATTER OF:

Gurjinderjit Sahota,

*A panel of the Admissions
and Education Committee:*

Karine Pelletier, *panel chair*

Kyle Dear

Kenneth Molloy

For the Appellant: Mr. Jonathan
Shulman

For the Law Society of Manitoba:
Mr. Rocky Kravetsky

DECISION

THE PANEL:

I. Introduction

1. The Appellant, Gurjinderjit Sahota (the "Appellant"), appeals the decision of the Director of Education (the "Director") of the Law Society of Manitoba (the "LSM") dated January 30, 2017. In her decision, the Director concluded that the Appellant breached the Canadian Centre for Professional Legal Education ("CPLED") Program Agreement and that the Appellant attempted to mislead the LSM in the course of its investigation. As a result of these breaches, the Director suspended the Appellant from the CPLED Program.
2. In the course of these proceedings, the Appellant brought two preliminary issues before the Panel: a request to adjourn the January 2018 hearing dates for the within appeal (the "Adjournment Request"); and a motion to allow oral evidence at the hearing of the appeal. As a result, two Interim Orders were issued by the Panel, dated December 20, 2017 and March 16, 2018, respectively.
3. The hearing of this Appeal on its merits proceeded on May 1 and 2, 2018, where both parties were provided with the opportunity to make submissions and present evidence relating to the present Appeal.

II. Materials Before the Director (and the Appeal Panel)

4. The following documents were considered by the Director:

- 2016-2017 Handbook for Students and Principals, Section 21
- 2016-2017 Manitoba CPLED Program Online Handbook
- CPLED website posting, September 19, 2016
- Email, October 20, 2016, Joan Holmstrom to all CPLED students
- CPLED Program Agreement, August 3, 2016, with appended Professional Integrity Policy
- CPLED Grade Record – G.S.
- Legal Research and Writing Module Introduction
- Legal Research and Writing Assessment Criteria
- CE Assignment, Memo to Articling Student from Erin Lesperance re: Colin Faraday
- CE Assignment submitted by G.S., September 22, 2016 (Memorandum to Erin Lesperance re: Colin Faraday)
- Letter, October 5, 2016, Holmstrom to G.S. re: Legal Research and Writing Competence Evaluation
- Letter, October 6, 2016, G.S. to Holmstrom re: Legal Research and Writing Competence Evaluation
- Letter, October 12, 2016, Holmstrom to G.S., with attached Legal Research and Writing CE Marking Sheet
- Letter, October 19, 2016, Holmstrom to G.S. with enclosed Comparison student A and B
- Letter, October 26, 2016, G.S. to Holmstrom
- Letter, October 27, 2016, Holmstrom to G.S.
- Email exchange, November 1, 2016, G.S. and Holmstrom
- Memorandum, Holmstrom, Investigation into integrity by G.S. with attachments:
 - Memorandum submitted by G.S.
 - Memorandum submitted by S.S.
 - Letter, October 5, 2016, Holmstrom to G.S. re: LRW Competence Evaluation
 - Letter, October 6, 2016, G.S. to Holmstrom re: LRW Competence Evaluation
 - Letter, October 19, 2016, Holmstrom to G.S. with enclosed Comparison student A and B
 - Letter, October 26, 2016, G.S. to Holmstrom
 - Letter, October 27, 2016, Holmstrom to G.S.
 - Email exchange, November 1, 2016, G.S. and Holmstrom

- Memorandum, September 22, 2016 re: Prosecution of Colin Faraday (from Grammarly Account)
 - Memorandum, September 22, 2016 re: Prosecution of Colin Faraday (from Grammarly Account)
 - Memorandum, September 24, 2016 re: Prosecution of Colin Faraday (from Grammarly Account)
- Memorandum, November 15, 2016, Ian Blomeley to Holmstrom with attached Novus Scan Report re: 2016068 (M.K.)
 - Memorandum, September 22, 2016 re: Prosecution of Colin Faraday with markings (source: G.S.'s Grammarly account)
 - Memorandum, September 24, 2016 re: Prosecution of Colin Faraday with markings (M.K.)
- Novus Scan Report re: 2016056 (S.S.)
 - Memorandum, September 22, 2016 re: Prosecution of Colin Faraday with markings (source: G.S.'s Grammarly account)
 - Memorandum, September 27, 2016 (S.S.)
- Novus Scan Report re: 2016058 (G.S.)
 - Memorandum, September 22, 2016 re: Prosecution of Colin Faraday with markings (source: G.S.'s Grammarly account)
 - Memorandum, September 22, 2016 (G.S.)
- Letter, November 28, 2016, Holmstrom to G.S.
- Letter, December 11, 2016, G.S. to Holmstrom enclosing:
 - "Exhibit A", Screen Shot, Yahoo Mail, Sept. 21 at 1:17 p.m.
 - "Exhibit B", Screen Shot, Yahoo Mail, Sept. 21 at 11:57 a.m.
 - "Exhibit C", Screen Shot, Yahoo Mail, Sept. 22 at 4:47 p.m.
- Handwritten Notes, December 12, 2016, Holmstrom re: meeting with G.S.
- Transcription of Handwritten Notes, December 12, 2016 (above)
- Screen shot, December 12, 2016, CPLED Login – G.S.
- Screen shot, G.S. Grammarly Account, December 12, 2016
- Letter, December 14, 2016, Holmstrom to G.S.
- Email exchange, December 28, 2016 – January 3, 2017, G.S. and Holmstrom
- Email, January 5, 2017, G.S. to Holmstrom
- Email, January 9, 2017, Holmstrom to G.S. with attached:
 - Copy of G.S. submission
 - Copy of T.G. submission
 - Memo from G.S. Grammarly account
- Letter, January 10, 2017, G.S. to Holmstrom
- Written Advice and Advocacy Module Introduction
- Written Advice and Advocacy Criteria

- Written Advice and Advocacy CE Assignment (Memorandum to Articling Student from Mieke Sorensen re: *Clearwater Supply Ltd. v. Russell Lindholm*)
- Notes re: Russell (Lindy) Lindholm
- Written Advice and Advocacy, T.G., December 16, 2014 with markings
- G.S. Written Advice and Advocacy submission, October 18, 2016, with markings
- Draft G.S. Written Advice and Advocacy submission from Grammarly, with markings
- G.S. Legal Research and Writing Assignment, with markings
- T.G. Legal Research and Writing CE Assignment, September 24, 2014, with markings
- Letter, October 5, 2016, Holmstrom to S.S
- Letter, October 11, 2016, S.S to Holmstrom
- Letter, October 19, 2016, Holmstrom to S.S, with attached Comparison Student A and B
- Letter, October 25, 2016, S.S to Holmstrom
- Letter, October 27, 2016, Holmstrom to S.S
- Letter, November 1, 2016, S.S to Holmstrom
- Letter, November 9, 2016, Holmstrom to S.S
- Letter, November 14, 2016, S.S to Holmstrom
- Letter, November 22, 2016, Holmstrom to S.S
- Letter, November 29, 2016, S.S. to Holmstrom
- Letter, January 18, 2017, Holmstrom to S.S, with enclosed:
 - Memorandum, September 27, 2016 re: Prosecution of Colin Faraday, with markings
 - Memorandum, September 22, 2014, T.G. re: Prosecution of Lewis Strutt
- Letter, January 25, 2017 (sic, should be 2017), S.S to Holmstrom with enclosed Article *R. v. Last* – Factors Analysis by LSUC, October 2010.

5. The following additional materials were presented and considered by the Appeal

Panel:

- Letter of Decision, Director, Admissions and Membership Department, Law Society of Manitoba, dated January 30, 2017;
- Interim Order, Admissions and Education Committee, Appeal Panel, December 20, 2017
- Interim Order, Admissions and Education Committee, Appeal Panel, March 16, 2018
- IP address overview – CPLED portal

6. The Panel received Submissions and authorities from both the Appellant and the LSM, including medical information, which is generally referenced below:

- *G.S. vs. Law Society of Manitoba*, Appeal document, undated
- Medical Certificate, March 03, 2012
- Medical Academic Accommodation, May 01, 2014 – August 31, 2015
- Medical Report, June 13, 2016
- Medical Record of Disclosure, January 11, 2017
- Medical Report, June 26, 2017
- Medical Report, December 19, 2017
- Medical Report, April 6, 2018
- Medical Report, April 11, 2018
- Character Reference, May 25, 2017
- 2017-2018 CPLED Program Schedule
- LSM Policy on Accommodation, August 8, 2016
- Letter to G.S., August 10, 2016
- Letter to Holmstrom, December 12, 2017
- Letters of Holmstrom, October 5, 2016 to January 30, 2017
- Email correspondence to Holmstrom, December 27, 2016 to January 9, 2017
- Letters to Holmstrom, January 10, 2017 to February 6, 2017
- *The Law Society of Manitoba v. Jolly*, 2016 MBLS 4
- *Baker v. Canada* (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817
- *Rules of the Law Society of Manitoba* – excerpts
- Law Society of Manitoba, *Guidelines for Appeals of Admissions Decisions*, August 2014
- *The Law Society of Manitoba v. Haque*, 2017 MBLS 1 – excerpt
- *Doolan v. Law Society of Manitoba*, 2016 MBCA 57 – excerpts
- *D.(T.) v. Manitoba*, 2015 CarswellMan 460, 2015 MBCA 74 – excerpts
- *R. v. Pelletier*, 1995 ABCA 128 – excerpt
- *Hopaluk v. TransX Ltd.* (1998), 164 D.L.R. (4th) 82, 1998 CarswellMan 396 (CA) – excerpt
- Email, November 14, 2016, Joan Holmstrom to Ian Blomely
- "Grammarly Memorandum1" attached to above
- Printout of G.S.'s access to WAA Module materials
- Transcripts from Guru Nanak University provided to the LSM by G.S.
- Email, December 8, 2016, F.G. to Ms. Holmstrom
- Ms. Holmstrom's notes, December 22, 2016
- Transcription of the above notes
- CPLED Program Calendar 2016-2017

- Spreadsheet containing IP addresses and dates.

III. Factual Background

7. The background that is set out in this decision does not attempt to recount the entirety of the voluminous record, but serves to provide some context and salient information considered by the Panel in arriving at its determination of the issues.
8. The CPLED Program operates as the LSM's Bar Admission Program. Any individual seeking admission to the practice of law must satisfy the Manitoba entrance requirements for admission, including satisfactory completion of articles and successful completion of the CPLED program.
9. The Appellant was admitted to the CPLED Program sometime in August 2016. On August 2, 2016, he signed and entered into a CPLED Program Agreement (the "Agreement"), also signed by his principal on August 3, 2016. In this Agreement, it is noted that the Student agrees to the following:
 - "I will abide by and comply with CPLED's Professional Integrity Policy (attached hereto)"
 - "All work I submit to CPLED will be my own original work"
 - "I will not lend, give or sell my CPLED work materials to any other students, prospective students or individuals"
 - "Breaches of professional integrity, including plagiarism, are 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 Manitoba for investigation and disciplinary action.”

- “I will give credit or properly cite any materials I have used during my research or have incorporated into my work.”

10. Along with being appended to the Agreement, the 2016-2017 Handbook for Students and Principals (the “Handbook”) states: “CPLED students are members of their provincial law societies and are bound by the profession’s ethical standards. Since professional integrity is essential to the practice of law the CPLED Program takes academic behaviour very seriously. **Plagiarism or any form of cheating is not tolerated.**” The Handbook then attaches a copy of the CPLED Policy on Professional Integrity, with reference to where this policy may be located on the LSM website, and goes on to state: “All principals and students must be completely familiar with the policy, as any breach could have a serious impact on whether or not they will be issued a license to practise law. A student can be suspended from the CPLED Program for unprofessional behaviour. More serious incidents will be referred to the Law Society discipline process for consideration as to whether the student should be suspended from articles.” An electronic copy of this Handbook is also available for students.

11. The CPLED Professional Integrity Policy includes the following statements:

- "CPLED students must conduct themselves with the honesty and professional integrity expected of a lawyer. To ensure licensing requirements are met and to protect the integrity of the CPLED Program, students are bound by the additional provisions in this policy."
- "All Assignment Submissions and Competency Evaluation Submissions must be the student's own original work."
- "To prepare their Assignment Submissions and Competency Evaluation Submissions students may use and discuss precedents from:
...
e. other sources, except Assignment Submissions or Competency Evaluation submissions from current or previous CPLED students."
- "Copying, paraphrasing or incorporating precedents as permitted in paragraph 7 is not plagiarism, but students must provide the source of any precedent that they copy, paraphrase or incorporate. Students may be asked to produce any precedent they copy, paraphrase or incorporate."
- "Students must not obtain, disclose or discuss CE Documents with anyone except the CPLED Director, Staff, or Facilitators. Students may discuss their CE Documents with counsel in the event of an appeal or disciplinary procedures."

- "Students must ensure that their CE Documents remain confidential by storing them securely through the use of password protection or in a place accessible only to the student."
- "A student who breaches this policy may be subject to imposition of a grade of competency not yet demonstrated, suspension or other consequences."

12. A reminder was sent out to all students participating in the CPLED Program on September 19, 2016, relating to plagiarism. In this reminder, it is stated that students may not quote from source material "without properly attributing such material and citing it appropriately" and "cannot use or refer to assignments submitted by other CPLED students, past or present". It is also noted that Students suspected of doing either "will be (and are presently being) investigated for breaches of the CPLED Program Agreement and its Integrity Policy."
13. As part of the Program, the Appellant was required to submit both assignments and competency evaluations. Both of these are submitted by the student through an online portal, which the student must log into to both access CPLED course materials and to submit assignments and competency evaluations.
14. The Appellant submitted his Competency Evaluation for the Legal Writing & Research module on September 27, 2016. According to the records produced, the Appellant accessed his CPLED account at 10:57 a.m. and later at 4:17 p.m.

The deadline for submission was twelve noon on September 27, 2016. After this time, it was made clear to the Panel, through a demonstration of the system that, once a document was submitted, it could not later be amended or modified.

15. On October 5, 2016, the Director wrote to the Appellant, advising him that she had concerns that the assignment he submitted on September 27, 2016 was not his original work. He was asked to respond to the letter within seven days of the date of the letter.
16. On October 6, 2016, the Appellant responded to the Director's letter, informing her that he submitted his own original work. He also advised that he did not share or discuss his work with anyone. He also assured the Director that he works from the office or his home, and that his personal computer is password protected. He also informed the Director that he did not share his CPLED login ID or password with anyone.
17. On October 12, 2016, the Director wrote to the Appellant to advise him that he had received a grade of "Competency Not Yet Demonstrated" in his Legal Writing & Research Competency Evaluation.
18. On October 19, 2016, the Director again wrote to the Appellant to inform him that another student had submitted work that had the Appellant's name on the metadata, and requesting that he explain why the work that this other student

submitted was almost identical to his own. Specifically, she noted: “I would appreciate receiving your written explanation for why your paper is a mirror image of another student’s paper and why your name appears in the metadata as an author of this other student’s C.E.” She attached to this letter a paragraph out of each submission, as an illustration of the similarity of the works.

19. On October 26, 2016, the Appellant responded to the Director’s letter, advising that he had provided access to his online Grammarly account to the other student, but did not authorize him to review his work. Grammarly is an online resource that allows a user to upload a document into his or her Grammarly account on the Grammarly website for it to be proofread by the computer program or, alternatively, where text can be typed or pasted directly into the Grammarly website for it to be reviewed. In this letter, the Appellant claims that the other student was able to view the assignment and “get a copy through Grammarly”. He assured the Director that he had since changed his Grammarly password.
20. On October 27, 2016, the Director sought clarification as to whether the Appellant had provided the other student with access to the Appellant’s account remotely, or whether he had provided him access to his personal computer.
21. In an email dated November 1, 2016, the Appellant wrote to the Director to advise that he had provided the other student access to his Grammarly account on his

personal laptop on September 27, 2016. In his email, he claims that the other student was on his Grammarly account for twenty or thirty minutes.

22. On November 1, 2016, the Director responded, seeking further information relating to the Grammarly program.
23. The Director undertook some steps to better understand the Grammarly website. In doing so, she was able to garner certain information about the services that it provided, but as she wished to delve deeper into the workings of the website, she contacted the Appellant to request his Grammarly ID and password. The Appellant reluctantly provided the information to the Director, who immediately logged into his account and noticed that there were documents loaded in the account that were related to the Competency Evaluation in question. The Director retained a copy of these documents.
24. In the time it took the Director to review the downloaded copies, she noted that the document title had been modified and that the date had been altered from September 22 to 24. The name "Gujinder" was also removed.
25. The Director requested a plagiarism check of the submitted work of the Appellant against work that had been submitted by a previous student. This scan determined that there were 1,771 significant matches as between both works.

26. The Director again wrote to the Appellant on November 28, 2016, outlining the information that she had gleaned from her investigation. In this correspondence, she stated: "I write to ask you to review the representations made by you in your letters to me, to correct any and all inaccuracies in these letters and to explain why you were not forthright from the beginning. I ask that your response include full details of what interactions you and (S.S.) had leading up to the finalization of your submissions for the LRW competency evaluation. I also ask that you include an explanation for your conduct in changing one of the documents in your Grammarly account subsequent to our phone call on November 1, 2016." She provided the Appellant with fourteen days for a response.
27. The Appellant responded on December 11, 2016, outlining that he had been truthful throughout and maintained that he did not share his work, nor did he read anyone else's work in preparing his assignment. He appended to this letter legal cases that he had researched, along with secondary sources.
28. On December 12, 2016, the Director requested a meeting with the Appellant. During this meeting, the Director explained that she had discovered that the Appellant had not accessed his CPLED account to retrieve instructions for the LRW module.
29. On December 14, 2016, the Director wrote to the Appellant, advising that she had recently discovered a number of documents in the Appellant's Grammarly account

that belonged to a former CPLED student (who was not under investigation with the Director). She also noted in this letter: “as my investigation now reveals that you accessed previous submissions in the Written Advice and Advocacy module, your grade for that module will be changed to an Incomplete from a Competency Demonstrated while my investigation is ongoing.”

30. The Appellant requested an extension in which to provide a response. The Director granted him an extension to January 5, 2017.
31. In an email dated January 5, 2017, the Appellant wrote to the Director, advising that he did not know the former CPLED student, and requesting that she provide him with a copy of the disputed assignments to compare to his own. He also noted in his email that, regarding the issue that he had failed to access his CPLED account for instructions and materials relating to the LRW module, he responded that he had “bought a USB stick from the Law Society which includes all required CPLED material which I use to complete my assignments.”
32. In the course of the hearing, it was noted that the USB stick contains CPLED materials, but does not contain CPLED assignments. Instructions for the CPLED assignments must be accessed by students via the online portal.
33. On January 9, 2017, the Director emailed the Appellant, advising that she did not deem his January 5, 2017 email to be responsive to her previous letter of

December 14, 2016. In this email, she provided him until January 10, 2017 to fully respond to the areas of concerns expressed in her letter. As per the Appellant's request, she also appended a copy of the former CPLED student's memoranda, which she had located in the Appellant's Grammarly account.

34. On January 10, 2017, the Appellant responded to the Director, emphasizing that he did not know the former CPLED student. He also advised that he had not reviewed the attachments provided until they had been sent to him by the Director. He indicated in this letter: "I am surprised that our wording is similar in some parts of the assignment. I can understand that some wording would be the same given its (*sic*) possible that we used the same precedents to draft the memo and justify that we recommended to sever the counts."
35. The Director's decision was communicated to the Appellant on January 30, 2017. Her investigation led her to conclude that the Appellant had repeatedly breached the CPLED Professional Integrity Policy and CPLED Program Agreement, and that the Appellant had misled the LSM when questioned about his conduct in the course of her investigation. As a result, the Director suspended the Appellant from the 2016-17 CPLED program.
36. In this letter, it was noted that the Appellant had a right of appeal of the Director's decision to the Admissions and Education Committee of the LSM pursuant to the CPLED Handbook and Law Society Rule 5-11(2).

IV. Standard of Review

37. In reviewing the Director's decision, the Panel adopts the approach relating to the applicable standard of review as outlined in a recent decision of the Appeal Panel in *The Law Society of Manitoba v. Haque*, 2017 MBLS 1, in which the following principles are enumerated:

- (i) Strictly speaking, the standard of review on appeals of this nature ought to be correctness. While the Director is to be acknowledged as an individual with considerable experience and expertise in the assessment and application of law society admissions criteria, no special deference is to be accorded to his decision with respect to findings of fact, application of legislation and Rules, or exercise of discretion.
- (ii) Given that the materials under consideration on this appeal are essentially the same as those considered by the Director, this Panel is in good as position as the Director to assess whether the specific conditions imposed are appropriate in the circumstances. The Panel can, and should, consider the matter, in its entirety, "afresh".
- (iii) It is open to this Panel to "do as it thought right, without any need to parse the reasons of the Director" (*Bergen v. Law Society of Manitoba*, Decision No. 20161031, para. 50), notwithstanding the

absence of new information and notwithstanding that this appeal has proceeded with remarkable alacrity by all parties.

38. The Panel adopts the above principles and accepts that the standard applicable in these proceedings is one which falls between a standard of correctness and a hearing afresh, or “de novo”.

V. Jurisdiction

39. The LSM pointed out, both in its written submission and at the hearing, that there was a question as to whether an appeal from a decision to suspend a student from the CPLED program is contemplated by *The Legal Profession Act*, SM 2002, c. 44, C.C.S.M., c. L105 (the “LPA”) or the *Rules of The Law Society of Manitoba* that were in effect as of the date of the Director’s decision (January 30, 2017) (the “January 2017 Rules”), or whether *The Fair Registration Practices in Regulated Professions Act*, SM 2007, c. 21, C.C.S.M. c. F12 (“FRPRPA”) requires such an appeal.
40. The 2016-2017 CPLED Handbook provides that a decision to suspend a student may be appealed to the Admissions and Education Committee, but there are no specific provisions in the LPA or the January 2017 Rules that grant the right of appeal or that empower CPLED to confer such a right.
41. In the within matter, in consideration of the reasonable expectation of the Appellant based on the wording of the CPLED Handbook, the Chief Executive Officer of the LSM exercised her authority pursuant to Rule 5-11(2) and referred the questions

raised by this appeal to the Admissions and Education Committee for determination in accordance with the Rules and Guidelines applicable to Admissions and Education Appeals. The Panel was subsequently constituted to hold a hearing to consider the matters referred to it by the Chief Executive Officer.

42. Further, at the hearing of this appeal, both the Appellant and the LSM acknowledged that the Panel has the jurisdiction to hear and render a decision in respect of the appeal, and that the Panel has the same jurisdiction as did the Director at the time that she arrived at her decision.
43. The January 2017 Rules were amended in September, 2017, and the following provisions were enacted:

Academic Misconduct

5-10(1.1) An articling student who breaches the CPLED professional integrity policy in respect of a competency evaluation, assignment or examination will receive a grade of competency not yet demonstrated on that competency evaluation, assignment or examination. (ENACTED 09/17)

5-10(1.2) In addition to assigning a grade of competency not yet demonstrated under subrule (1.1), the chief executive officer may reprimand, suspend, expel from the CPLED program or otherwise discipline an articling student who breaches the CPLED professional integrity policy. (ENACTED 09/17)

5-10(1.3) The chief executive officer may terminate the articles of an articling student who has been expelled from the CPLED program under subrule (1.2). (ENACTED 09/17)

...

Appeal of grades

5-11(1) An articling student who:

- (a) receives a grade of competency not yet demonstrated on a supplemental competency evaluation or supplemental examination; or
- (b) is found to have breached the CPLED professional integrity policy

may appeal the grade or the finding to the committee within 14 days of being issued the grade or the finding and being advised of the right to appeal. (AM. 04/04; 05/07; 10/07, 09/17)

- 44. Prior to these amendments, the January 2017 Rules did not contemplate academic misconduct on the part of an articling student. Nor did the prior Rules provide for the potential consequences that may befall an articling student if found guilty of academic misconduct in his or her participation in the CPLED Program. Specifically, the January 2017 Rules did not set out what would happen to an articling student's articles if suspended from the CPLED Program, nor did they provide for a right of appeal from the Director's decision (as mentioned above).
- 45. However, the CPLED Handbook, the CPLED Program Agreement and the CPLED Professional Integrity Policy all reference academic misconduct and the potential consequences thereof, including suspension. See paragraphs 10, 11 and 12 of these Reasons.
- 46. At the hearing, the LSM argued that the Director's jurisdiction to impose a suspension was derived from the CPLED Handbook and the CPLED Program Agreement. In the CPLED Program Agreement, which is signed by the articling student, the student acknowledges that a breach of the CPLED Professional Integrity Policy may result in investigation, suspension, failure of the program

and/or disciplinary action by CPLED or by a referral to the LSM's discipline process.

47. The LSM argued that, where there is a finding of academic misconduct, the Director has the option of either suspending the student or referring the matter to the discipline process, as contemplated in the CPLED Handbook. If recommended, it would then go to the CIC, where charges could be laid and disciplinary action taken.
48. The LSM pointed out that this Appeal would not form part of the Appellant's disciplinary record, as the decision was a suspension, not a dismissal, and that, notwithstanding the decision of the Director and the outcome of this appeal, the Appellant can apply for re-admission pursuant to Rule 5-4.
49. The purpose and duties of the LSM is set out in section 3 of the *LPA*, which states:

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) ...

50. Subsection 17(5)(c) and section 43 of the *LPA* provide that the Benchers of the LSM may make Rules that establish the educational requirements and procedures for admitting persons as members, and that the Benchers may establish and

maintain, or otherwise support, a system of legal education, including a bar admission program.

51. The Director is responsible for overseeing and administering the CPLED Program and the articling process in Manitoba. Her duties include, but are not limited to, reviewing assignments and examinations, and monitoring and investigating plagiarism.
52. Although the January 2017 Rules were largely silent on the authority of the LSM, and by extension, the Director, to impose consequences in respect of academic misconduct, the LSM has a broad public interest mandate and regulatory powers in respect thereof, and must establish standards for the education of persons seeking the right to practice law in Manitoba. The January 2017 Rules, and the current Rules, provide that every articling student must successfully complete the CPLED Program.
53. In light of the LSM's purpose and mandate; the wording of the CPLED documents (including the CPLED Handbook, the CPLED Program Agreement, and the CPLED Professional Integrity Policy); the reasonable expectation of an articling student participating in the CPLED Program; and the Director's responsibility to administer the CPLED Program, the Panel is satisfied that it was within the Director's discretion to determine: (a) whether the Appellant breached the CPLED Agreement and CPLED Professional Integrity Policy; (b) whether the Appellant attempted to mislead the LSM in the course of its investigation; and (c) to impose

consequences and/or sanctions upon the Appellant, including a suspension from the CPLED Program, arising from her findings.

VI. Mootness

54. In the context of the Appellant's Adjournment Request, the LSM argued that a decision of the Panel in this Appeal so close to the lapse of two years from the date of the Appellant's enrolment in CPLED would render the appeal "moot", given the timelines set out in Rule 5-5(1).

55. Rule 5-5(1) provides, in part, as follows:

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; (AM. 04/04; 05/07; 10/08; 05/11; 06/15)¹

56. While the appeal was pending, the CPLED modules continued and were missed by the Appellant, and will only be offered again in the following year.

57. The Appellant commenced articling on or about August 2, 2016, and his Principal signed his CPLED Agreement on August 3, 2016. Pursuant to the wording of Rule 5-5(1)(a), the Appellant would be required to complete the CPLED Program prior to August 2, 2018.

¹ Subsection 5-5(4) is not relevant to the within matter.

58. Given the timing of the hearing of the within Appeal, the issue of whether the Appellant can complete his articles within the two year timeframe is moot. Both parties acknowledged that, whatever the outcome of this Appeal, the Appellant will need to apply for re-admission pursuant to Rule 5-4. However, it was also agreed that the Panel's determination was not moot to the extent that it may have an impact upon the Appellant's application for re-admission, and in particular, on the onus upon the Appellant to meet the requirement set out in Rule 5-4(1)(d) that he is "of good moral character and a fit and proper person to be admitted".
59. Having determined that this consideration is sufficient to warrant review, the Panel has decided to allow the Appeal to proceed. Accordingly, the Panel will proceed with the substantive matters raised on Appeal.

VII. Argument

A. The Appellant

60. The Appellant, through his counsel, claims that he was not provided with a fair hearing before the Director.
61. Specifically, the Appellant alleges that the conclusions drawn by the Director were not supported by evidence, and that the explanations provided to the Director for consideration were not accorded sufficient weight. The Appellant claims that, in the exercise of her discretion, the Director has acted arbitrarily and unfairly.
62. The Appellant also claims that his request for accommodation was not accorded sufficient weight and consideration by the Director. In particular, the Appellant argues that he had provided medical documentation to the LSM which indicated

that he required “more time” to enable him to “concentrate”. The Appellant submits that the Director did not take this information into account in her investigation and in rendering her decision.

63. Throughout these proceedings, the Appellant maintains that he was the victim of another CPLED student, who had accessed his work, amended his submissions, with intent to discredit him. In fact, this same student had admitted that he took content from the Appellant’s assignment as part of a separate investigation by the Director of the other CPLED student.
64. The Appellant further submits that he was not accorded procedural fairness, in that he was not provided sufficient opportunity to be heard. Further, the Appellant claimed that the facts were not completely disclosed as information obtained in investigating issues relating to the other CPLED student were not disclosed to the Appellant.
65. In addition to the above, Counsel for the Appellant argues that the issue on review is that the Director did not utilize her discretion appropriately in coming to the conclusion that the Appellant should be suspended from the CPLED Program. The Appellant argues that there were a number of irregularities that ought to have raised concerns for the Director, and that the inconsistencies identified by the Director should have favoured the Appellant. Specifically, the Appellant argues that the following ought to have been considered by the Director:

- There was no evidence that the Appellant had submitted plagiarised work. In fact, the evidence suggested that it was a third party who had last accessed the Appellant's account and removed legal sources that had been cited in the Appellant's original work. Further, the individual who had submitted an assignment in the Appellant's name used a shortened version of his name, which the Appellant says he never utilizes. In short, the Appellant submits that the Director did not sufficiently consider that a third party had tampered with the assignment submitted by the Appellant;
- There was no evidence to suggest that the Appellant had accessed the work of a prior student. The Appellant did not know the prior student and denied that he had any involvement with him. Any work on his Grammarly account was not uploaded by him, but rather by someone else;
- While he admits that he shared his password to his Grammarly account to another CPLED student, he denies that he provided access to his CPLED account to another CPLED student; and
- The Appellant further argues that, once an assignment is submitted, it can be altered, as it is submitted in Word format. The Appellant indicates that he did not submit plagiarised work. He says that the work that he submitted was his original work. The work submitted on his behalf was modified after he had submitted

it, which is entirely possible, as the assignment which he submitted was in Word format – a format which can be altered.

66. In short, the Appellant suggested that these irregularities, coupled with the other issues raised, were sufficient to raise concerns in respect of the Director's decision. Taken together, the Appellant says that there is insufficient evidence to demonstrate that the Appellant acted inappropriately, or that his actions merited a suspension from the CPLED program.
67. The Appellant also submits that, if there was sufficient evidence to support a conclusion that the Appellant had indeed submit plagiarised work, the Panel should conclude that the Director used her discretion inappropriately and deem the suspension to be too severe a consequence.
68. In support of his submission, the Appellant relied on the following authorities: *The Law Society of Manitoba v. Jolly*, 2016 MBLS 4; *Baker v. Canada* (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817.

B. The LSM

69. The LSM submits in argument that the Director's decision to suspend the Appellant was correct. The Director based her decision on objective evidence, which she had thoughtfully gathered. She had approached the Appellant on many occasions, both in writing, in person, and via telephone, to receive his response to the allegations presented. On each occasion, the Appellant either provided insufficient reply or provided information inconsistent from his prior responses. On the whole,

the LSM submits that the Director weighed all of the relevant evidence and came to the correct conclusion in deciding to suspend the Appellant.

70. The LSM denied that the Director did not consider the issue of the Appellant's request for accommodation in the context of her investigation. The LSM had accommodated the Appellant in his CPLED assignments. As it relates to the investigation into these matters, the LSM submits that the Appellant had never raised the issue of accommodation. If he required additional time for the provision of a response, the Appellant would need to raise the issue with the Director. On the one occasion that he requested additional time, the Director provided a further extension to the Appellant. Further, when the reply was insufficient for the Director's purposes, she provided the Appellant another opportunity to respond to the allegations presented. On the whole, the LSM submits that the Director had provided the Appellant with sufficient time to respond to the allegations. The LSM further submits that the Appellant did not at any time suggest that he was unable to participate in the investigation as a result of his injuries.

71. While the LSM agreed that the LSM was required to provide an opportunity for the Appellant to respond to the allegations, the Director was not required to provide the Appellant with a "hearing" as suggested, or at all. Throughout, the Director acted fairly and in keeping with the principles of natural justice. She provided the Appellant with an opportunity to review the information and the allegations. She provided him with multiple opportunities to respond to the allegations. She provided him with the opportunity to amend his previous responses. She also

provided him with the opportunity to respond to new allegations as they arose throughout the investigation. In short, the LSM submits, the Director provided him with every opportunity to consider the evidence before her, and to be heard.

72. In short, the LSM urged the Panel to conclude that the Director was correct in determining that he should be suspended from the CPLED Program.

VIII. Issues

73. Multiple issues were raised on Appeal and accordingly considered by the Panel, namely:

1. Was the Director's decision in keeping with the principles of natural justice?
2. Did the Director fail in her duty to accommodate the Appellant in her investigation?
3. Were the findings made by the Director correct?
4. If the decision was not correct, what remedies are available to the Appellant?

74. These issues are outlined and considered below under relevant headings.

IX. Analysis

A. Principles of Natural Justice

75. The Appellant says that he had a right to be heard before the Director's decision was made. Specifically, he says that he should have been provided with an opportunity to answer to the allegations before the Director's decision was rendered.

76. In determining the duty of fairness, counsel for the Appellant urged the panel to consider the analytical factors as articulated in the Supreme Court of Canada decision in *Baker, supra*:

- a) The nature of the decision and the decision-making process employed;
- b) The nature of the statutory scheme;
- c) The importance of the decision to the individual affected;
- d) The legitimate expectations of the party challenging the decision, and
- e) The nature of the deference accorded to the body.

77. Applying the *Baker (supra)* factors to the facts of this case, the Panel has determined: a) the Director, in her discretion, proceeded by way of investigation into the concerns regarding the Appellant's assignments. The administrative process followed was not akin to judicial decision-making; b) the statutory purposes in the *LPA* includes the protection of "the public interest in the delivery of legal services with competence, integrity and independence". This, together with fairness owed to the student, respect for the director's discretion and proportionality are among the key principles that guide this Panel; c) it is undisputed that the suspension had a significant effect on the Appellant's rights and may potentially impact his ability to be re-admitted to the CPLED Program in the future; d) there was a legitimate expectation by the student of a fair process; and e) based on the *LPA* and the Rules, the Director had the discretion to determine the procedure that she followed. The Panel has no difficulty finding that there was a legitimate expectation by the student of a fair process.

78. It follows from the *Baker (supra)* principles set out above that, in situations such as this, where the impacted individual is facing a potential suspension, a high duty of procedural fairness is required, given the consequences that might flow from a negative decision.
79. In making this determination, the Panel had regard to the *LPA* and January 2017 *Rules*, which do not require the Director to hold a formal hearing into the matters under investigation. It has also considered the discretion of the Director to determine the process that she will follow and make conclusions on the basis of the evidence she has garnered.
80. In this case, the most significant of the *Baker* factors, in the Panel's estimation, is the potential impact of the Director's decision. The LSM would be entitled to consider past issues and performance in determining whether a student should be a candidate for and admitted to the CPLED Program in the future. A suspension acts as a potential barrier for the Appellant in his ability to be reinstated to the CPLED Program in the future; it may result in a loss of the presumption of "good character" typically enjoyed by applicants, requiring the Appellant to demonstrate that he meets the requirements of Rule 5-4(1)(d).
81. These considerations warrant a requirement for the duty of procedural fairness. Natural justice in this instance would require full disclosure and an opportunity to respond at all stages of her investigation. Against these expectations, the Panel has assessed whether the process followed met the standard applicable.

82. In this instance, the Director reviewed the documentary evidence and provided the Appellant with an opportunity to respond to each allegation. The Appellant was also offered an opportunity for correcting or contradicting any prejudicial information and/or documentation that came to the attention of the Director. When new allegations were brought to light, the Director provided the Appellant with a full opportunity for response. The Director also provided sufficient opportunity and time for the Appellant to consider the information and documentation and provide a thorough response. Where the Appellant requested additional time to provide a response, the Director provided an extension. Where the Appellant did not provide sufficient response, the Director provided additional opportunities for the Appellant to respond. Where the Appellant requested the opportunity to review the documents on which the Director was relying, he was provided a copy.
83. The *Baker (supra)* caution to ensure that “administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker” (at para. 22), was not breached in this case.
84. The Panel concludes that the procedure followed by the Director can be characterized as fair, impartial and open.

B. The Duty to Accommodate

85. The Appellant argues that, in coming to her decision, the Director did not place sufficient weight and did not appropriately consider the duty to accommodate the Appellant. The Appellant had previously brought to the Director's attention his request for accommodation, including his requirement to be afforded additional time in which to complete assignments and write examinations.
86. The Appellant also submits that the Director did not adequately consider his request for medical accommodation in his ability to "secure and monitor access to his personal computer and research tools by a third party or parties" as a reasonable explanation.
87. In each written correspondence with the Appellant, the Director provided a minimum of seven days for a response. The Appellant only once raised a concern with timelines, requesting an extension to one of her letters. In that instance, the Director provided the Appellant with an additional week for a reply. Further, as the Director deemed the response to be incomplete, she provided him with additional time beyond this extension for him to respond to the allegations.
88. Also, when the Appellant met with the Director on December 12, 2016, he did not indicate to the Director that he was not prepared to meet with her due to his medical restrictions, or that there was anything preventing him from participating in the meeting. Instead, he participated in the meeting and provided certain information

to the Director. The issue raised in this meeting was that he had not accessed the CPLED instructions for the assignment. His response to this expressed concern was included in his January 5, 2017 email.

89. On the issue of the Appellant's contention that he was unable to or incapable of securing or monitoring access to his personal computer or his research tool, the Appellant has not brought forward any information in support thereof that would warrant consideration by the Panel.
90. In the Panel's review of the information presented, none of the information provided at or in the context of the hearing suggests that the Director failed in her duty to accommodate the Appellant.

C. Review of Director's decision

91. As noted above, the Panel accepts that the standard applicable in these proceedings is one which falls between a standard of correctness and a hearing afresh, or "de novo".
92. As previously stated, the scope and purpose of the LSM is set out in section 3(1) of the *Act*, where it is noted:

The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

93. This case is not one where the individual in question has accepted any responsibility or accountability. Throughout, the Appellant has vehemently denied

having either plagiarised or collaborated with any other student with respect to any of the CPLED assignments that he submitted.

94. The LSM takes the position that students were expressly and repeatedly instructed that plagiarism and collaboration were strictly prohibited.
95. Plagiarism is a serious breach of trust which is inconsistent with the values of the legal profession, particularly integrity, candour and honesty. In this case, the Appellant has denied submitting any plagiarised work, and says that any work that appears to resemble either the work of another student or of a former student is either coincidental or is as a result of a ploy to discredit him.
96. In the course of these proceedings, the Panel understood and accepted from the information presented that work submitted by students into the CPLED portal cannot later be modified. While submissions are entered as Word documents, they cannot be edited once they are submitted by the student. Any subsequent submission would be entered as a new, secondary document, which would render an automatic receipt, sent automatically via email by the CPLED Program to the student submitting the work. Beyond that, at the closing of the time for submission, no further submission will be accepted.
97. In this case, the time for submission was at 12 p.m. on September 27, 2016. The Appellant submitted his assignment at 10:55 a.m. The other CPLED student had submitted his assignment at 10:07 a.m. No further submissions were entered into the Appellant's CPLED account, and no receipt of submission was provided to the

Appellant beyond the receipt he received for submission of his 10:55 a.m. assignment.

98. An issue relating to IP addresses was also raised in this proceeding, and a document was produced which outlined the IP location of certain students, including the Appellant, when accessing the CPLED portal. This document outlined that on September 27, 2016, the Appellant had accessed the portal twice: once in the morning, and once in the afternoon, both from the same IP address. The other CPLED student had accessed the portal on several occasions over the course of the day, from the same IP address as other CPLED students who all lived in the same household. No information presented suggested that the Appellant's CPLED account was accessed by anyone other than the Appellant.
99. The Appellant has asked the Panel to make a positive determination that he has not engaged in any wrongdoing, on the basis that the information on record does not support the conclusions of the Director. The Appellant submits that he was the victim of another student, who wished to cause him harm. Further, as this other student had admitted to the LSM that he had misled the Director in the course of an investigation, the Appellant suggested that he demonstrated that he had not been honest in the process.
100. The LSM, on the other hand, submits that the Director's decision was not based on information gleaned in the course of the separate investigation involving the other student, but rather on the basis of the information obtained in the course of

investigating the allegations involving the Appellant. On the basis of the information obtained and the responses provided, the Director's decision was correct.

101. This is a case which requires credibility findings. In so doing, the Panel had regard to the following oft-quoted passage from the decision in *Fayna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.):

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In sort, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

102. In reviewing the evidence, the Panel considered counsels' submissions as well as the documentary evidence entered as exhibits. Based on the evidence adduced, the Panel has a number of concerns with the information adduced by the Appellant for the following reasons:

- a. Throughout the proceedings, the Appellant remained steadfast that he did not engage in any wrongdoing. He did not accept at any point that he submitted any plagiarised work; that he had been in breach of CPLED procedures; or that he had misled the Director. The difficulty in taking a stark position in that regard is that, if there is any veracity in any of the information in support of the claim

that the Appellant had indeed plagiarized assignments, he would then be deemed to be dishonest and untruthful. This is a concern for this Panel.

- b. The evidence and argument presented by the Appellant did not sufficiently establish that the Appellant had been the victim of a ploy by another student to discredit him.
 - c. The evidence and argument presented by the Appellant did not sufficiently demonstrate that the Appellant had not loaded into his Grammarly account documents that were authored by a former CPLED student.
 - d. The Panel has accepted the evidence of the LSM that submitted work cannot be modified once it has been loaded into the CPLED portal. There was no physical evidence of a secondary entry or of tampering, as alleged by the Appellant.
 - e. The Panel has also accepted the evidence presented by the LSM that the Appellant had not accessed the CPLED portal to receive instructions on the submission of the assignment.
103. On the whole, and based on a standard of a balance of probabilities, the Panel is satisfied that the Director's decision to suspend the Appellant from the CPLED Program was correct in the circumstances.

X. Conclusion

104. This Panel has determined that the Appeal is dismissed, and the decision of the Director affirmed.

105. The Panel wishes to thank counsel for the Law Society and for the Applicant for their helpful submissions and collegial conduct throughout the hearing.

July 9th, 2018



Karine Pelletier – Panel Chair



Kyle Dear – Member



Kenneth Molloy – Public Representative