

2023 Registration Review Report

Law Society of Manitoba



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Introduction

The Fair Registration Practices Office (FRPO) issues this registration review report for the Law Society of Manitoba (LSM) under authority of The Fair Registration Practices in Regulated Professions Act (act). Registration reviews are conducted at times specified by the director of fair registration practices and in accordance with the review provisions in the act, section 15.1, 15.2, and 15.3. The purpose of this review is to determine compliance with the legislation and to identify areas that may need improvement. Compliance to the legislation refers both to the fairness of assessment and registration practice, with particular attention to the fair consideration of internationally educated applicants, as well as the co-operation of the regulator with the director.

Manitoba's fairness legislation was amended in December 2021. This review is largely restricted to the consideration of compliance regarding three new duties in the Fair Registration Practices Code: a duty that assessment criteria be necessary, a duty to abide domestic trade agreements and a duty to notify FRPO regarding changes in assessment and registration practice. Outstanding issues raised in previous registration review reports may also be raised or result in further recommendation for action.

This registration review results in an FRPO statement of compliance for the regulator. Reviews that result in recommendations to change practice or policy contain an action plan response from the regulator, current as of May 2023.

To provide context, a brief description of LSM's state of progress under fairness legislation to date precedes the compliance analysis. The report also includes appendices containing a flowchart of the registration process for internationally educated applicants, as well as registration data. Data is the latest information available at the time of review completion.

State of Progress

The Law Society of Manitoba (LSM) is committed to the fair assessment and registration of internationally educated lawyers. Since the introduction of Manitoba's fairness legislation in 2009, LSM has worked co-operatively with FRPO and taken measures to support the registration of internationally educated applicants (IEAs). Progressive measures include:

- helping to address challenges securing internships by reaching out to internationally educated lawyers residing in Manitoba and currently engaged in the National Committee on Accreditation (NCA) certification process. Individuals are encouraged to register with LSM as law students to better support connection with the legal community and to allow supervised practice opportunities. LSM also hosts networking/support events for NCA students
- considering an applicant's international professional experience to support exemptions for LSM's articling requirement
- providing a high degree of procedural fairness with good information, well-organised websites, written reasons for unfavourable assessment decisions and appeal opportunities
- providing flexible bar admission application policies that support applicants securing principals and articling spots as they are completing the NCA certification process
- through the Canadian Centre for Professional Legal Education's (CPLED) Practice Readiness Education Program (part of LSM's bar admissions process), focusing on training, not screening, and providing supports and remedial opportunities to help ensure high success rates

Fair Practice Analysis

I. Assessment criteria must be necessary – act, 8(4)

The criteria used in an assessment of qualifications must be necessary to assess competence in the practice of the profession.

With regard to substantive assessment criteria in a profession, for instance, the type and level of academic training required or the level of scrutiny brought to assess qualifications, FRPO recognises the authority of self-regulated professions setting these standards and will only question these requirements in the circumstance they are patently unreasonable. FRPO's evaluation focuses on the ways in which criteria and requirements may be unnecessary, unduly burdensome, or potentially result in forms of systemic discrimination, particularly as they may affect internationally educated applicants (IEAs).

LSM's compliance to necessary assessment criteria

LSM's assessment criteria and various requirements for registration are for the most part relevant and reasonable, complying with this duty. Substantive requirements for IEAs include certification by the National Committee on Accreditation (NCA) and the completion of LSM's bar admissions program.

FRPO raises the following concern:

1. The first step, NCA certification process involves the assessment of an applicant's foreign legal education. The purpose of NCA certification is to ensure applicants possess knowledge of Canadian law equivalent to graduates of accredited Canadian common law programs. NCA may assign exams in a variety of areas, including mandatory exams in core subject areas. An exception or waiver accommodates graduates of 'dual' programs — foreign law programs operating in partnership with Canadian law programs. In these dual programs, the Canadian program teaches the Canadian law coursework.

Several foreign law programs in Australia and the United Kingdom offer coursework in Canadian law. These programs qualify the applicant to proceed with the NCA certification process; however, coursework in Canadian law is not recognised in a way that supports waiving a core area exam. FRPO understands this has not always been the case; prior to 2015, applicants could have their studies recognised and not be assigned some of the exams.

In circumstance where there is evidence of legal studies substantively equivalent to the legal coursework students of Canadian law programs complete, applicants should be recognised by NCA and not required to provide additional evidence by way of exams or redundant academic coursework.

Prima facie, NCA’s mandatory exam assessment policy is at odds with Canada’s obligations under the recently ratified Lisbon Recognition Convention and the impending Global Convention of the Recognition of Qualification Concerning Higher Education.

Specifically, applicants from signatory jurisdictions such as Australia and the United Kingdom, have a right to have their qualifications recognised unless there is evidence of a substantial difference. Section VI — Recognition of higher education qualifications, Article VI.1 stipulates where a recognising party — regulator, employer or educator — does not recognise the equivalence of an applicant’s higher education credential, that party is obliged to identify the shortcoming or the difference. A similar provision is found in Article V of the Global Convention.

The recognising party, in other words, has a burden of proof to make the case for non-recognition. That NCA does not play a role in the accreditation of a foreign academic program, lacking the degree of confidence it may possess with Canadian programs, is not sufficient ground to withhold or deny recognition. The ratification process for signatory countries involves governments working with their education institutions to ensure the availability of information needed by recognising parties to make a substantive equivalence determination.

II. **Duty to comply with domestic trade agreements – act, 4(1)**

A regulated profession must ensure that its registration practices comply with the obligations of a domestic trade agreement.

The Manitoba government has labour mobility obligations that extend to regulated occupations, under both Chapter 7: Labour Mobility of the Canadian Free Trade Agreement (CFTA) and Article 13: Labour Mobility of the New West Partnership Trade Agreement (NWPTA). In Manitoba, regulated professions are required to comply with labour mobility obligations under The Fair Registration Practices in Regulated Professions Act, section 4(1), The Labour Mobility Act, section 3(1), and for health professions, under The Regulated Health Professions Act, section 32(3).

In the regulated occupations, the purpose of these obligations is to provide labour mobility through license-to-license recognition. This needs to occur without any material requirements for training, experience, examinations or assessments — CFTA, Article 705, paragraph 1, NWPTA, Article 13, paragraphs 1 and 2.

LSM’s compliance to abide labour mobility obligations

LSM’s labour mobility policy is compliant under this duty. FRPO identifies no concerns or any non-permissible requirements. Mobility is further accommodated with LSM being party to the Federation of Law Societies of Canada’s National Mobility Agreement. This agreement promotes ease of mobility by permitting practise for up to 100 days prior to registration for qualified practitioners from common law provinces in Canada.

III. **Notice of changes in registration practices – act, 5(2)**

A regulated profession that proposes to change its registration practices, as described in the information provided under clause (1)(a), must notify the director of the proposed change, at the time and in the manner and form required by the director.

LSM's compliance to the duty to notify

In preparation for this registration review, FRPO requested updates regarding changes to assessment and registration practice. LSM provided updates to FRPO; LSM complies with the duty to notify.

Recommendations

The Fair Registration Practices Office sees the following opportunity for the Law Society of Manitoba to improve compliance to The Fair Registration Practices in Regulated Profession Act and labour mobility legislation:

1. Working with the National Committee on Accreditation, ensure internationally educated lawyers with academic training in Canadian law substantively equivalent to law graduates of Canadian law programs are not assigned unnecessary exams or subject to redundant academic coursework.

Regulator Action Plan

In response to the recommendation made by the Fair Registration Practices Office, the Law Society of Manitoba committed to the following action plan, current as of May 2023:

Recommendation	Action(s)	Anticipated Completion Date
Working with the National Committee on Accreditation, ensure internationally educated lawyers with academic training in Canadian law substantively equivalent to law graduates of Canadian law programs are not assigned unnecessary exams or subject to redundant academic coursework.	The Law Society of Manitoba will consult with the National Committee on Accreditation about the recognition of coursework in Canadian Law that is completed outside of Canada.	June 2024

Compliance

FRPO's 2023 registration review of the Law Society of Manitoba (LSM) examines their compliance to three duties in the Fair Registration Practices Code of the act; assessment criteria are necessary, labour mobility obligations are respected and FRPO is notified regarding changes in assessment and registration practice.

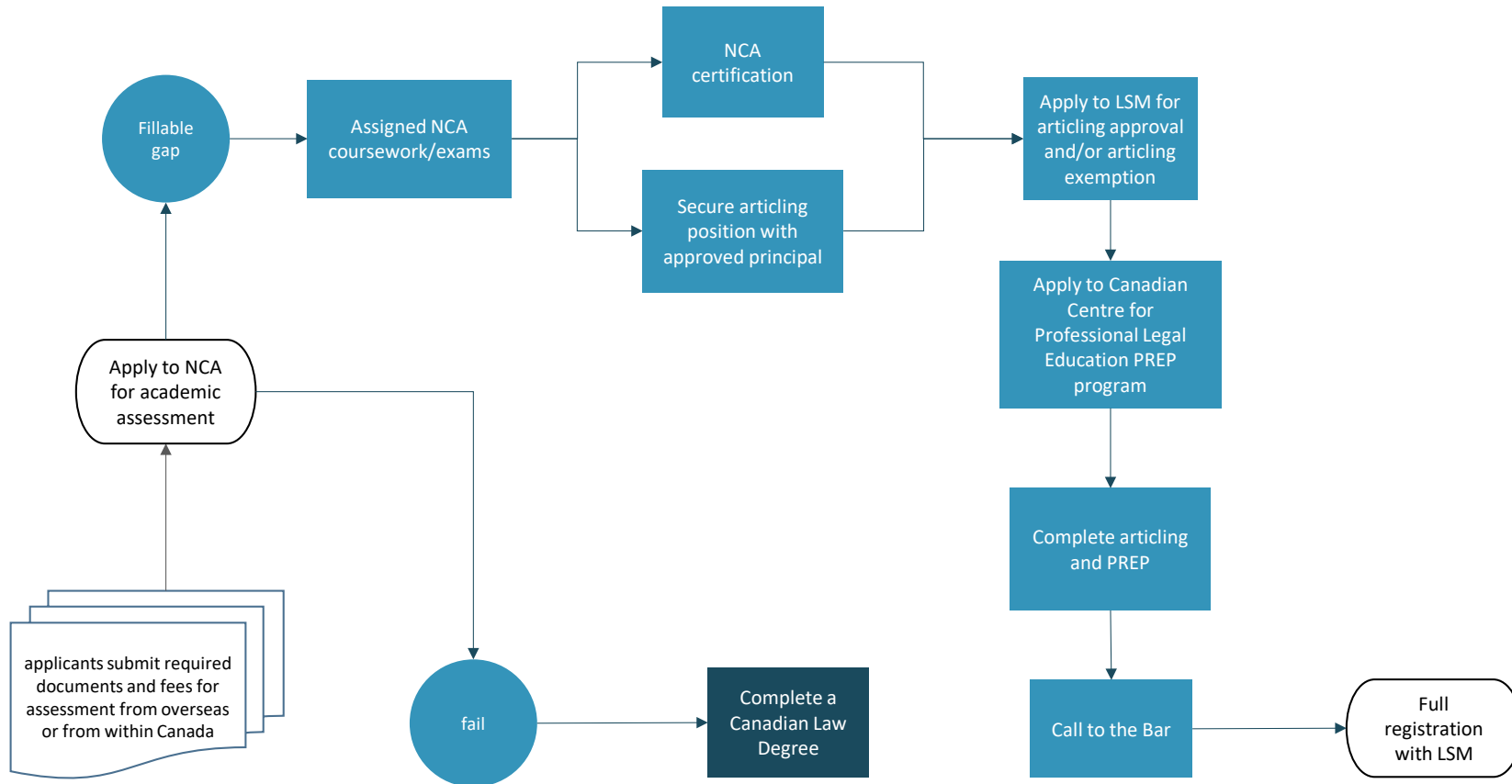
FRPO finds LSM compliant with the duty to respect labour mobility obligations and the duty to notify FRPO regarding changes in assessment in registration practices.

FRPO raises a concern under the duty to necessary assessment criteria about the need to recognise the academic qualifications of IEAs with legal studies in Canadian law taught in foreign law programs.

LSM's commitment to consult with NCA about this matter is a reasonable first step. An NCA policy change may be required to address this concern, ensure fair practice and compliance to The Fair Registration Practices in Regulated Professions Act.

Appendix 1 – Registration Process for Internationally Educated Applicants

Law Society of Manitoba



Law Society of
Manitoba



5,131
Registered
Members

(As of December 2022)

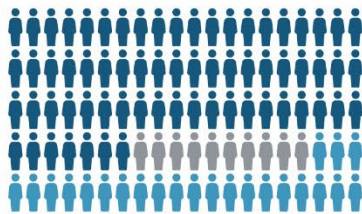
2011-2022 Internationally Educated Applicant Data



313

applications

Application Outcomes



registered - **67%** | in process - **10%** | file closed - **23%**

Closed File Status



Top Countries of Education



applicants were educated in **23**
different countries



Median Time to Registration

2.6 years

2011-2022 Domestic Applicant Data



1,321

applications

1,023 (70%)

registrations