



OMFC REGISTRATION REVIEW

**Law Society of Manitoba
Final Registration Review Report (2012)**

OFFICE OF THE MANITOBA FAIRNESS COMMISSIONER

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Introduction

This Final Registration Review Report presents the results of the Office of the Manitoba Fairness Commissioner's (OMFC) registration review with the Law Society of Manitoba (LSM) as of March 2013.

Registration reviews are conducted as part of the Fairness Commissioner's mandate to review the registration practices of regulatory bodies subject to *The Fair Registration Practices in Regulated Professions Act* (Act).

The purpose of a registration review is to enable the Fairness Commissioner to determine a regulator's compliance to the Act and to make recommendations to improve compliance. Two senses of compliance are at work in the legislation. First and foremost, it refers to the fairness of assessment and registration practice, with particular attention drawn to the need for the fair consideration of internationally educated applicants. Secondly, it refers to the co-operation of the regulator with the Fairness Commissioner.

The Act stipulates that a registration review for any given regulator is to be undertaken at times specified by the Fairness Commissioner. It also stipulates that the content of a registration review is to include an analysis of the relevance and necessity of registration requirements, the timeliness of decision making, the reasonableness of fees and the registration of internationally educated individuals. This may involve the review of any third parties employed in the assessment and registration process.

The OMFC's review process culminates in a Final Registration Review Report, complete with an Action Plan from the regulator. This report is a public document submitted to the Province's Minister of Immigration and Multiculturalism and posted on the OMFC's website.






The OMFC undertook a registration review with the LSM between January and March of 2013 (see appendices A & B). Several meetings were involved, documentation was gathered and reviewed, field work was conducted and the LSM provided an Action Plan in response to the Fairness Commissioner's recommendations. The LSM's Action Plan, as well as the OMFC'S review findings and the Fairness Commissioner's recommendations follow throughout this report.

Registration Review Process

The OMFC's multi-step review process has several key phases: agreeing to a review schedule, documenting and understanding, evaluating and drafting the findings and recommendations, and achieving an action plan to move things forward. The process is designed to support meaningful reviews that concretely identify fairness issues and lead to progressive change.

The Fairness Standard and Criteria Document

For the purposes of the 2012/2013 registration review cycle, regulatory practice is evaluated against a single, broad fairness standard: ***Dedicated and fair practices are applied for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure their effectiveness.*** In the Fairness Standard and Criteria Document, this fairness standard is defined by 14 elements, each further differentiated into one or more criteria.

For each criterion in the 'Fairness Standard and Criteria Document', green, yellow, and red check marks --    -- designate whether evidence is found indicating compliance, needs improvement, or non-compliance. Practices identified as needing improvement or non-compliant --  or  -- are followed by an analysis that explains the finding.

Recommendations, Action Plan & Compliance Statement

The Fairness Commissioner makes recommendations based on a consideration of the issues of non-compliance and areas that show opportunity for improvement. These are identified and explained in the 'Fairness Standard and Criteria Document' completed for the regulator.

The action plan, in turn, is drafted by regulators to respond to the Fairness Commissioner's recommendations. For each of the Fairness Commissioner's recommendations, regulators reply with a plan to address the concern as well as a timeline for the execution of the plan. Regulators are given opportunity to remark upon any recommendation made by the Fairness Commissioner.

Finally, the Fairness Commissioner's Compliance Statement provides comment on the suitability of the regulator's Action Plan and the overall compliance of the regulator's registration practice.

OMFC Support

Addressing problematic practice can pose considerable challenges for regulators. No remedy may be readily at hand; third-parties may be involved; resources and expertise may be wanting. In these circumstances, the OMFC is committed to working with regulators to support and assist the development of innovative solutions and better practice.

Legal Profession in Manitoba

Lawyers provide clients legal advice, plead cases or conduct prosecutions in courts of law. They represent clients before tribunals and administrative boards, and draw up legal documents such as contracts and wills. Lawyers work in a variety of settings, including in government, the private sector, and law firms.

Currently in Manitoba there is a demand for lawyers. The Law Society of Manitoba (LSM) reports that there is an increasing demand for rural practitioners. With the aim of increasing the number of rural practitioners in under-served areas, the LSM established a “Forgivable Loans Program”. The Forgivable Loan Program is an initiative of the Law Society of Manitoba, the University of Manitoba’s Faculty of Law and the Manitoba Bar Association. The Law Society will award a forgivable loan to selected students from under-served Manitoba communities subject to them being accepted into the University of Manitoba’s Faculty of Law. The Law Society will forgive 20% of the loan for each year that the recipient practises in his or her community after being called to the bar.

In response to access to justice concerns the LSM created the Family Law Access Centre (FLAC) as a pilot project offered by the LSM to assist middle income families afford legal services with respect to family law matters.

In the law profession, internationally educated lawyers bring a wealth of culture, experience and linguistic diversity to serve Manitoba’s increasingly diverse population. The Federation of Law Societies of Canada’s National Committee on Accreditation (NCA) reports that of its internationally trained applicants, approximately half are Canadians that have gone to law school abroad and returned to be licensed in Canada.

Overview of the Assessment and Registration Process of the Law Society of Manitoba

The Law Society of Manitoba (LSM) regulates the practice of law in Manitoba under the authority of *The Legal Profession Act* (C.C.S.M. c. L107) and Regulations 105/90. In accordance with the legislation, only registered members and Canadian lawyers eligible under the National Mobility Agreement can practice law in Manitoba and represent themselves as a lawyer, barrister, solicitor or attorney-at-law.

Qualifications

There are two substantive qualifications required for licensure: holding a bachelor of law degree or *juris* doctor degree from a faculty of common law at a Canadian law school accredited by the Federation of Law Societies of Canada *or* for internationally educated applicants, a Certificate of Qualification issued by the Federation of Law Societies of Canada's **National Committee on Accreditation (NCA)**. Secondly, individuals must successfully complete the LSM's bar admission program, which includes the Canadian Centre for Professional Legal Education Program in Manitoba (CPLED) and a 52-week articling period with an LSM-approved principal.

Assessment and Review Process

Before applying to the LSM for entrance into the bar admission program, internationally educated applicants must first secure a NCA Certificate of Qualification that verifies academic training as equivalent to that of a Canadian graduate. Graduates of approved Canadian law programs, on the other hand, initiate the registration process by applying to the LSM for entrance into the CPLED program.

NCA Certification

To obtain NCA certification, internationally educated applicants begin by applying for an assessment of their academic credentials. This involves completing an application form, submitting a \$450.00 application fee and providing the following documents:

- an original set of final academic transcripts for undergraduate (non-legal) post-secondary or university studies;
- a current detailed Curriculum Vitae;
- an official copy of academic transcripts related to the applicant's legal education directly submitted by the post-secondary institution;
- if applicable, directly submitted documentation of membership in good standing issued by the applicant's previous local regulatory authority(ies);
- if applicable, directly submitted documentation issued by the local regulatory authority which governs the applicant's admission to the practice of law in that jurisdiction, for any courses or examinations required by such authority.

The NCA's assessment of academic equivalency takes into account a variety of factors, including the applicant's professional work experience. Applicants are

informed in writing of their NCA assessment results within three months of completed application.

Applicants will either receive confirmation of academic equivalence by way of an NCA Certificate of Qualification, or be required to pass a number of NCA exams in specified subject areas, or in lieu of exams, complete NCA-approved academic coursework, or be directed to complete a full Canadian common law degree.

Currently, the majority of internationally educated applicants are required to pass exams or complete law school coursework. NCA exams are 3-hour, open book, written tests, cost \$350.00/exam and are usually offered 4 times a year. Legal courses, suitable in lieu of NCA exams, are available at most of Canada's law faculties, including the Faculty of Law at the University of Manitoba. Costs will vary by institution and full time enrolment is not necessary.

CPLED Program

Canadian graduates and NCA certified international graduates must apply to the LSM for entrance to the Canadian Centre for Professional Legal Education Program in Manitoba (CPLED) and complete 52 weeks of articles.

The CPLED Program is the Manitoba bar admission course, combining face-to-face, small group instruction and online learning experiences aimed at developing skills required by competent general practice lawyers. Three modules are face-to-face and take place in a classroom setting and the rest are delivered online.

LSM applicants have the option of taking the CPLED Program before, during or after their articling process. Both articling and the CPLED Program must be completed within two years of the start date of either.

Articling students are responsible to secure an appropriate articling opportunity with an LSM-approved principal. To become a principal, a lawyer, registered and in good standing, must submit an "Application to Act as a Principal to the Law Society", as well as an articling education plan and an "Articling Agreement" signed by the principal and the applicant.

Applicants must complete the LSM's "Application for Admission to the Manitoba CPLED Program and as an Articling Student" form, pay a \$52.50 application fee, pay a \$2,100.00 CPLED Tuition Fee (payable by three-part instalment) and supply the following documents:

- NCA Certificate of Qualification;
- Certificate of Standing to be provided directly from any jurisdiction outside of Manitoba in which you are or have been entitled to practise law;
- Character reference;
- CPLED Professional Integrity Agreement;
- Original official transcripts submitted directly from all post-secondary institutions showing all degrees granted and final marks received;
- Certified Criminal Records Check from the RCMP Canadian Criminal Records Information Service, or documentation showing that it has been requested.

The Law Society typically informs applicants of their eligibility to enter the CPLED Program and articles within three weeks of completed application.

To graduate, CPLED Program participants must demonstrate competency in all skill areas (problem solving, legal research, writing, drafting, interviewing and advising, advocacy and dispute resolution, practice management and ethics and professionalism), and successfully complete all assignments, competency evaluations and examinations. Remedial opportunities are available for the various assessments and students may be required to re-do entire modules of the program.

At the end of the articling term, applicants must file the following with the Law Society:

- Certificate of completion of articles signed by the student's principal;
- Application for call to the bar and admission as a solicitor;
- Final assessment of education plan;
- Application to commence active practice if the student intends to practice immediately upon Call to the Bar; and
- A \$575.00 Call to Bar Fee.

Although a Call to the Bar may take place at any time of the year, articling students are traditionally called in a formal ceremony held each year in mid-June.

CPLED Exemptions

For internationally educated lawyers with practising experience, the LSM has a process in place to allow qualified individuals the possibility of waiving any or all parts of the CPLED Program and the articling requirement. Those seeking an exemption are required to submit a LSM application for exemption form with a written request setting out the specific exemptions being sought and a detailed description of relevant practising experience that supports exemption. The LSM requires:

- A \$262.50 application fee;
- A completed Summary of Practice Experience in a Foreign Jurisdiction Form;
- Letters of reference from practising lawyers that address relevant experience;
- Certificates of Standing from all jurisdictions in which the lawyer has or has had practising status.

Applicants exempted from the CPLED Program may be required to practice under conditions or restrictions, such as practising under the supervision of a licensed LSM member for a period of time. All exempted applicants are required to pass a 'Qualification and Professional Responsibility Exam'.

Appeal Process

Both the NCA and the LSM provide appeal and pre-appeal opportunities for assessment decisions. Applicants appeal academic certification decisions to the NCA's Appeal Panel. Contested LSM decisions, including CPLED Program assessment decisions are heard by the Appeals Sub-Committee of Admissions and Education Committee of the Law Society of Manitoba. Both NCA and LSM appeals are heard by committees independent of original decision makers.

Time and Cost

The time and cost to be assessed and registered varies depending on the circumstances of the applicant. The NCA commonly sees its internationally trained lawyers taking 2 to 5 years, with direct costs in the range of \$3000.00 to \$10,000.00. Completing university coursework is the principal variable that accounts for this range of potential cost. There likely will be a variety of associated costs: documentation costs, possibly translation costs, exam preparation and study materials. A list of direct costs can be seen below.

For a documents-ready, highly qualified applicant (relative to Canadian standards), who receives a NCA Certificate of Qualification upon application and is exempted from the CPLED Program, the process takes as little as 6 months, with direct costs totalling approximately \$1,300.00.

The majority of internationally trained applicants are required to complete NCA exams or approved academic coursework. Of these individuals, most will require two to four years to receive NCA certification. Four to eight exams are commonly assigned for a direct cost as high as \$2,800.00 (\$350.00 per exam). Approved university coursework for each assigned exam is a significantly more expensive option.

The CPLED Program is \$2,100.00. To date, the vast majority of candidates have completed the program within the scheduled two-year period. Throughout their articling period, candidates are usually gainfully employed.

Cost

NCA application	\$ 450.00
NCA Examination fees / per exam	\$ 350.00
NCA Assessment Administrative Fee	\$ 50.00
NCA Assessment Appeal	\$ 325.00
NCA Exam Cancellation Fee / per exam	\$ 50.00
Application fee for admission as an articling student into the CPLED Program	\$ 52.50
CPLED Tuition	\$2,100.00
Call to the Bar - CPLED graduates	\$ 575.00

Registration Review Findings

Summary of Findings

The Law Society of Manitoba (LSM) is committed to the fair assessment and recognition of Internationally Educated Lawyers (IELs). A dedicated assessment strategy is in place for the registration of IELs.

A rigorous, in-depth assessment process has been established both to evaluate international academic qualification and articling competencies, including a consideration of foreign professional work experience. Both provincially and nationally, procedural fairness is well exemplified as the assessment process is transparent, detailed reasons accompany assessment results and review opportunities are provided.

The LSM is commended for the variety of supports and accommodations provided throughout its Canadian Centre for Professional Legal Education Program in Manitoba (CPLED). Currently, the program can boast a 100% success rate for IELs, where the vast majority of applicants successfully complete the program within the normal time frame. The program's focus is on training and remedial support rather than on screening.

The LSM recently introduced an exemption process in 2011 that allows IELs with professional work experience the opportunity to be exempted, in whole or in part, from the articling requirement and the CPLED Program. The Federation of Law Societies of Canada's National Committee on Accreditation (NCA) underwent major administrative and policy changes in 2009 which has resulted in greater numbers of IEL certifications.

The LSM registration material provided on its website is for the most part reasonable and helpful. However, some aspects of the information could be improved; for example there is a need for realistic cost and time range information, academic upgrading information and a better organized webpage for IELs.

Key findings from the LSM's registration review are listed below. These findings cover the range of fairness issues as defined by the Fairness Standard and Criteria document and roughly follow the order of this document (see pp.12-26).

- The registration information for IELs provided on LSM's website is for the most part reasonable. We find:
 - LSM provides a dedicated page for IELs that links to the first step, NCA website. The CPLED exemption policy is also provided for applicants with professional work experience. It would be helpful if the CPLED Handbook that describes the program and the application steps were linked here.
 - LSM's CLPED Program Handbook provides clear details of the structure, requirements, policies and assessments involved in the program. The 50-page manual is comprehensive and user-

friendly with 'to do lists', schedules and tips to support applicants navigating the program's requirements.

- LSM's Good Character requirement is well articulated with clear principals and criteria.
 - Documentation requirements are clear. The possibility of alternative documentation is identified.
 - LSM's fees, assessment timelines and key assessment dates are clear.
 - No realistic time and cost range information, no information about academic upgrading opportunities and no information about an applicant's access to records are provided on LSM's website.
- Certification information provided on the NCA's website is clear and well-organized. We find:
 - The 'Policies and Guidelines' page identify and define the criteria and multiple factors that are used to determine academic qualification.
 - Documentation requirements are clear and alternative documentation is a possibility.
 - NCA assessment timelines and fees are clear. No realistic time and cost range information is provided.
 - NCA provides reasonable information about its certifying exams – application, timelines, cost, content, format, appeals.
 - A variety of standards documents are at hand and subject to regular review: Lawyer Regulation, Code of Professional Conduct, Law Society Rules, CPLED Handbook 2012-2013 and Competency Profile. Notable is the Federation of Law Societies of Canada ongoing National Admission Standards Project for Lawyers and Quebec Notaries Report (September, 2012). This project is working to establish consistent and transparent national standards for admission to the legal profession in Canada. The standard has been drafted and can be implemented once passed in various Canadian jurisdictions.
 - Documentation requirements are extensive but not unreasonable given character of the assessments involved. The first step, NCA academic qualification assessments considers not only the applicant's academic program, but their specific coursework, coursework grades and professional registration and work experience. Likewise, LSM will consider a range of factors relevant to support exemption from elements of its CPLED Program.
 - To avoid arranging for the third party submission of documents twice, when applicants apply to LSM's CPLED Program, they can have their documents transferred from the NCA at no charge.

- For immigrant applicants, the LSM currently does not require a criminal records check from an applicant's home jurisdiction, but instead relies on the check conducted by the Federal Government as a condition of receiving a residency card.
- NCA has taken several measures to ensure the validity and reliability of its academic qualification assessments and its certifying exams. A database of files is in place and assessments are regularly checked for consistency; exams are designed and reviewed by Canadian law professors.
- Supports are in place for preparation of NCA exams, including syllabi and practice exams. Applicants have the option of completing approved university coursework in lieu of NCA exams.
- Detailed written reasons accompany NCA assessment result letters. The NCA's assessment of academic qualification and its exams are subject to appeal. Appeal information accompanies assessment result letters.
- The LSM provides flexible application policies for entrance into the CPLED Program; applicants can enroll as they near completion of their NCA certification requirement and articling can be initiated in conjunction with CPLED training activities.
- A variety of measures are in place to support the integrity of LSM's CPLED Program. Evaluation criteria and competency standards are clearly defined, principals are advised of their responsibilities and an audit of the program was conducted in 2010.
- Professional work experience is recognized at both steps in the assessment process -- supporting both academic qualification and CPLED Program exemptions.
- English language proficiency is not a registration requirement. The NCA advises applicants that a high level of proficiency is required by its exams and for competent practice in the field. English language proficiency requirements have not been identified for either the assessment process or professional practice.
- LSM's Registrar and CPLED's Program Director provide strong personal support and assistance to applicants throughout the registration process. A pro-active communication strategy is employed: incomplete applications are flagged and applicants are kept on track with program commitments.
- The LSM provides detailed written reasons and appeal notification for its assessment result letters. Applicants are provided detailed explanations of any gaps in performance throughout the CPLED Program.
- All of LSM's assessment and registration decisions that deny or condition registration are subject to appeal.

- Fees are based on cost-recovery and assessment timelines are reasonable.
- The assessment and registration process can be long and arduous for IELs. In particular, to meet the first step, NCA certification requirement, two to four years is common and many IELs fail to ever achieve certification and abandon the process.

Commendable Practices

A number of LSM's assessment and registration practices deserve to be recognized as exemplary, fair practices. Most of these will have already been described above or in other areas of this report, but the most significant bear repeating.

- In 2011 the LSM introduced an exemption process for its CPLED Program. Applicants can now have the program waived in whole or in part based on evidence of qualification from their professional work experience.
- With its focus on training and remedial opportunities, LSM's CPLED Program supports its applicants and can boast a 100% success rate. The vast majority of applicants complete the program within the two year time frame.
- The LSM excels at procedural fairness. The assessment process is transparent, evaluation criteria are clear, written reasons accompany assessment decisions and review opportunities are available.
- Qualifications acquired through international professional work experience are factored at both levels of assessment: academic qualification and the CPLED Program.
- The LSM's Code of Professional Conduct has undergone a major review over the last five years. The revised, 2011 document is pragmatic and provides helpful explanation articulating one of the most well established, demanding and sophisticated codes in the professions.

Fairness Standard & Criteria Document – LSM Review Findings

Standard: <i>Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.</i>					
Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	1. Qualification requirements and the criteria used to assess qualifications.	✓			
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	2. Documentation requirements.	✓			
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	3. Fees and fee payment options.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	4. A realistic sense and range of the full costs involved in the process, including common associated costs.		✓		<p>No realistic estimates of the full cost range of the process or of any common associated costs are provided. Particularly for the first step, the NCA certification process, a realistic estimate of the cost range of certification, including common associated costs, would support proper planning for applicants.</p> <p>We note the personal assistance applicants receive from the NCA and the LSM staff throughout the registration process, to some extent, mitigates the concerns we are identifying with the quality of information found on these websites.</p>
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	5. Financial support opportunities.		✓		<p>LSM's registration material mentions that applicants needing financial assistance should contact the Director of Education and Competence for Manitoba's CPLED Program. CPLED tuition can be paid in three-part installment. The LSM also offers financial support to rural-located students in its CPLED Program for travel and accommodation for assessments that require their presence in Winnipeg.</p> <p>No mention is made of possible Government support opportunities. The LSM reports being willing to provide links to information about Provincial programs on its website.</p>
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	6. Timelines and key dates.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	7. A realistic sense and time range of how long the entire process often takes.		✓		<p>Little realistic time range information is provided in the registration material. According to the NCA, timelines for academic certification vary markedly depending on the circumstances of the applicant. NCA data from 2011-2012 indicates 14% achieve certification within a year, 42% within 2 years, 85% within 3 years, and 95% within 4 years. The LSM advises applicants that on the order of 80% will be required to complete academic coursework or challenge exams.</p> <p>The LSM reports that, to date, all of their CPLED students have been successful and that the vast majority complete the program on schedule. A realistic time range may be as little as 6 months for highly qualified applicant assigned no coursework or exams and exempted from the CPLED program to 5 years or more for those that require significant academic training and the full CPLED program. Realistic time range information would support proper planning for IELs.</p>
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	8. Step-by-step, easy-to-navigate path of the registration process.		✓		<p>LSM's website could be better organized for internationally trained applicants. A dedicated page is provided for foreign trained lawyers, where applicants first learn of the CPLED Program with a description of the LSM's exemption policies and process. A description about the CPLED Program is located elsewhere under a Pre-call Education tab.</p> <p>Organization aside, once found, the quality of information provided tends to be very good. The CPLED Program Handbook is designed to support navigation through the process. Upon contact with the LSM, applicants are sent a dedicated information package with all of the relevant information for the CPLED Program and application process. The LSM reports that they have not had experience with applicants struggling with the information provided on their website.</p>
1. Applicants are provided clear, complete and accurate information about assessment and registration process.	9. Information provided about opportunities for general and occupation-specific upgrading.		✓		<p>No information about opportunities for professional upgrading is provided. In the case of internationally trained applicants requiring NCA exams or approved academic coursework, it would be helpful if the LSM draws attention to the coursework opportunities at the University of Manitoba's Faculty of Law and a link to where detailed information can be found.</p>

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
2. Standards of practice are identified and periodically reviewed.		✓			
3. Required qualifications are relevant and necessary for competent professional practice.		✓			
4. Documentation requirements are reasonable. Alternative documentation opportunities are available and explained to applicants	1. Difficult-to-provide documents – e.g. originals, syllabus – are warranted.	✓			
4. Documentation requirements are reasonable. Alternative documentation opportunities are available and explained to applicants	2. Alternative documentation opportunities are available and clearly explained.	✓			
4. Documentation requirements are reasonable. Alternative documentation opportunities are available and explained to applicants	3. Criminal records policy is warranted and clearly explained.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
5. Any third party assessments in the registration process are transparent, objective, impartial and fair.	1. Applicants are provided clear, complete and accurate information about the role of third party assessments in the registration process.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
5. Any third party assessments in the registration process are transparent, objective, impartial and fair.	2. Measures are in place to ensure third party assessment policy and practice is fair.		✓		<p>The NCA has taken a reasonable of measure to ensure fair assessment against a well-articulated academic standard. A variety of factors are considered, including qualifications acquired through professional work experience. A database of files is in place and assessments are regularly checked for consistency; exams are designed and reviewed by Canadian law professors. Supports are in place for preparation of NCA exams, including syllabi and practice exams. Applicants have the option of completing approved university coursework in lieu of NCA exams.</p> <p>Nonetheless and fair assessment aside, the OMFC'S understanding is that many IELs face a difficult, long and costly period achieving certification. Many try and ultimately fail to achieve it. Although we did not receive confirmation from the NCA during the course of the review, we have seen numbers indicating that less than half of NCA applicants were successful from 1999 to 2009 seeking certification. Moreover, statistics provided by the NCA indicate that many applicants require several years to be certified; according to 2011/12 data, for applicants that are certified 14% occur within 1 yr, 42% within 2 yrs, 85% within 3 yrs and 95% within 4 yrs. We also understand the NCA underwent significant administrative and policy changes in 2009 and that subsequently they are reporting a significant rise in the number of certificates issued.</p> <p>Upon NCA certification, the light appears at the end of the tunnel. To date, the LSM's CPLED Program has graduated all of its applicants and very few require extensions. Moreover, applicants are employed in the field during the articling component of the program.</p> <p>That the process is long and arduous does not necessarily mean it is unfair or inefficient. The law profession requires a high degree of academic acuity and extensive knowledge of Canadian law. Still, the difficulties experienced by many internationally educated applicants is concerning and naturally raises questions about the nature of the problems they face and actions that may ameliorate them. Are better exam preparation supports needed? Do people have sufficient opportunities to enroll in law school courses? Is English language proficiency a barrier? The situation calls for further review.</p>

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
5. Any third party assessments in the registration process are transparent, objective, impartial and fair.	2. Measures are in place to ensure third party assessment policy and practice is fair.		✓		<p><i>(continued)</i></p> <p>Consideration could also be given to a review of the licensing strategy itself. The objective of NCA certification is to verify that an applicant has an appropriate understanding and knowledge of Canadian law equivalent to that of a graduate of a Canadian common law program. “Equivalence to an approved three year Canadian common law degree”, the NCA explains, “serves as the benchmark when the NCA assesses applicants with legal education and/or training from another country”.</p> <p>Beyond fair execution, whether the process is fair also depends in part on the reasonableness of the NCA’s certification strategy in itself or as a whole. Does it make sense to seek knowledge equivalent to a graduate of a Canadian program, if practitioners in the field commonly specialized in only a few areas of practice? Particularly for mid-career applicants, it may be more relevant to ensure they can demonstrate knowledge of similar breadth and extent as a competent, mid-career Canadian lawyer. A more practice-based NCA knowledge standard may be worth consideration.</p>
5. Any third party assessments in the registration process are transparent, objective, impartial and fair.	3. Third party assessment decisions are subject to appeal.	✓			
6. Assessment of qualifications is transparent, objective, impartial and fair.	1. Valid and reliable methods of assessment are employed for internationally educated applicants.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
6. Assessment of qualifications is transparent, objective, impartial and fair.	2. Assessment methods and tools are subject to psychometric scrutiny and cultural review.	✓			
6. Assessment of qualifications is transparent, objective, impartial and fair.	3. Multiple assessment methods are available. Applicants have the opportunity to demonstrate competence.	✓			
6. Assessment of qualifications is transparent, objective, impartial and fair.	4. Knowledge and skills acquired through work experience are assessed, including international work experience.	✓			
6. Assessment of qualifications is transparent, objective, impartial and fair.	5. International educational credentials are subject to a reasonable, valid equivalency assessment: reasonable measure has been taken to acquire an informed understanding of the content of international educational programs and their equivalence to Canadian programs.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
6. Assessment of qualifications is transparent, objective, impartial and fair.	6. The regulator has objective standards and criteria to assess knowledge and competencies acquired through work experience.	✓			
7. Staffs responsible for assessment, appeals and working with internationally educated applicants received appropriate training and possess relevant expertise	1. Training for the assessment academic qualifications.	✓			
7. Staffs responsible for assessment, appeals and working with internationally educated applicants received appropriate training and possess relevant expertise	2. Training for the assessment of work experience	✓			
7. Staffs responsible for assessment, appeals and working with internationally educated applicants received appropriate training and possess relevant expertise	3. Appeal training	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
7. Staffs responsible for assessment, appeals and working with internationally educated applicants received appropriate training and possess relevant expertise	4. Cross-cultural training.	✓			
8. English and French language proficiency requirements for registration and professional practice are reasonable.	1. French or English language proficiency levels are identified and based on the language demands of the profession.		✓		<p>English language proficiency is not a registration requirement. The NCA advises applicants about the need for a relatively high level of English language proficiency to be successful and suggests second language applicants consider being assessed for their proficiency. NCA exams are equivalent to Canadian law school examinations and require a high level of reading and writing proficiency.</p> <p>Although nothing is mentioned in its registration material, the LSM acknowledges the importance of English language proficiency to complete the CPLED Program and for practice in the field. To support proper preparation for second language applicants, information about the high level of English language proficiency required should be introduced in the LSM's registration material.</p> <p>Insufficient English language proficiency may be a significant factor for those internationally trained applicants that fail to achieve NCA certification.</p>
8. English and French language proficiency requirements for registration and professional practice are reasonable.	2. Level of language proficiency identified at key points in the registration process – e.g., entry to practice vs. application or entry to gap training.		✓		See comments above.

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Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
8. English and French language proficiency requirements for registration and professional practice are reasonable.	3. The identification of the nature and type of communicative demands for professional practice and the assessment process		✓		See comments above.
8. English and French language proficiency requirements for registration and professional practice are reasonable.	4. The appropriate use of language proficiency tests, expiration dating and test-scores.				Not applicable.
8. English and French language proficiency requirements for registration and professional practice are reasonable.	5. A variety of English language test are recognized				Not applicable.
9. Assessment and registration process is relationally fair.	1. Written reasons accompany assessment results.	✓			
9. Assessment and registration process is relationally fair.	2. Detailed feedback is provided about qualification gaps.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
9. Assessment and registration process is relationally fair.	3. Applicants have the opportunity to discuss assessment and registration decisions of concern.	✓			
9. Assessment and registration process is relationally fair.	4. Applicants without appropriate qualifications receive advice and information about alternative careers.	✓			
10. Registration process allows for different levels of recognition.	1. Opportunity for restricted or conditional license and supervised practice.	✓			
10. Registration process allows for different levels of recognition.	2. Re-assessment only required in areas where competence has not been demonstrated.	✓			
10. Registration process allows for different levels of recognition.	3. Time-frames for re-assessment are consistent with currency of practice standards.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
11. A fair appeal or review process is available.	1. All assessment and registration decisions that deny or condition registration are subject to appeal	✓			
11. A fair appeal or review process is available.	2. Appeal or review committee members are independent from those responsible for the original decision	✓			
11. A fair appeal or review process is available.	3. Timely hearings and appeal decisions	✓			
11. A fair appeal or review process is available.	4. Detailed, written reasons are provided to appellants for unfavorable decisions.	✓			
11. A fair appeal or review process is available.	5. Applicants are advised of their right to appeal.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
11. A fair appeal or review process is available.	6. Appeal information accompanies any assessment and registration decision subject to appeal.	✓			
12. Legal exceptions notwithstanding, applicants have full and timely access to their assessment results and records associated with registration.	1. There is a process under which requests for records are considered. Fees for access to records are reasonable and do not exceed cost recovery.	✓			
12. Legal exceptions notwithstanding, applicants have full and timely access to their assessment results and records associated with registration.	2. Applicants are informed of their access to records and the process for requesting records.		✓		The LSM has a process in place to allow applicants access to records. Applicants are advised informally, upon request.
13. Fees involved in the assessment and registration process are reasonable.	1. Fees do not exceed cost recovery.	✓			
14. Assessment and registration process is timely.	1. Reasonable measure is taken to ensure the prompt processing of applications and assessments.	✓			

Standard: *Dedicated and fair practices are in place for the assessment and registration of internationally educated applicants. Policies and procedures are documented, consistently followed and periodically reviewed to ensure effectiveness.*

Elements	Criteria	Assessment			Office of the Manitoba Fairness Commissioner's Findings
		Compliant	Needs Improvement	Non-compliant	
14. Assessment and registration process is timely.	2. Communication with applicants is timely and systematic.	✓			
14. Assessment and registration process is timely.	3. Assessment and registration process is structured efficiently and minimizes unnecessary delays.	✓			

Fairness Commissioner's Recommendations

As a result of the OMFC's registration review of the Law Society of Manitoba (LSM) and to ensure compliance to *The Fair Registration Practices in Regulated Professions Act*, the Fairness Commissioner recommends:

1. With regard to the assessment and registration information, *that* LSM provide clear, complete and accurate information about:
 - a. Realistic time and cost range for the registration process, including realistic cost and time range information for the first step, the NCA certification process;
 - b. Financial support opportunities, academic upgrading opportunities and an applicant's access to records;
 - c. An easy-to-navigate, step-by-step web page dedicated for internationally educated applicants.
 - d. The importance and need of a high level of English language proficiency.
2. *That* LSM review and provide the OMFC additional information clarifying the situation and challenges IELs face receiving NCA certification.

Law Society of Manitoba's Action Plan

In response to the Fairness Commissioner's Recommendations, the Law Society of Manitoba proposed the following action plan as of March 2013. The plan is reprinted in its entirety under the 'LSM's Planned Action(s)' column in the table below.

The LSM's Action Plan will form the basis of its relationship with the OMFC moving forward. The plan is monitored by the OMFC and will be tracked in the 'Completion Date' box of the Action Plan as it comes to fruition. As the report will be available online, this allows any interested party to see the progress to date.

OMFC's Recommendation	LSM's Planned Action(s)	Short Term Less than 3 months	Medium Term 3 months to 1 year	Long Term 1 year or more	Completion Date
<p>1. With regard to the assessment and registration information, <i>that</i> LSM provide clear, complete and accurate information about:</p> <ul style="list-style-type: none"> a. Realistic time and cost range for the registration process, including realistic cost and time range information for the first step, the NCA certification process; b. Financial support opportunities, academic upgrading opportunities and an applicant's access to records; c. An easy-to-navigate, step-by-step web page dedicated for internationally educated applicants. d. The importance and need of a high level of English language proficiency. 	<p>1. The LSM will revise its registration information to provide the following:</p> <ul style="list-style-type: none"> a) realistic time and cost estimates for the registration process, inclusive of the NCA certification process; b) information about financial support opportunities, specifically provincial programs, as well as possible academic upgrading opportunities and how applicants can access their records with the Law Society; and c) a web page that provides a step-by-step guide for internationally educated applicants. d) information about the importance and practical need for a high level of English language proficiency. 	<p>✓</p> <p>✓</p> <p>✓</p>	<p>✓</p>		

OMFC's Recommendation	LSM's Planned Action(s)	Short Term Less than 3 months	Medium Term 3 months to 1 year	Long Term 1 year or more	Completion Date
Regulator's Comments:					
2. That LSM review the challenges IELs face receiving NCA certification for the purposes of identifying the problems and to consider solutions.	The LSM will seek the cooperation of the NCA in reviewing any specific challenges that IELS encounter in obtaining NCA certification with a view to assessing whether those challenges create unnecessary obstacles to NCA certification and, if so, how those might be changed.			✓	
Regulator's Comments:					

Fairness Commissioner's Statement of Compliance

The Law Society of Manitoba's Action Plan is a constructive response to the recommendations that resulted from the OMFC's registration review. These actions will support fairer practice and are fully consistent with the requirements under *The Fair Registration Practices in Regulated Professions Act*.

In many respects, the Law Society's registration practices are very progressive and fair. For internationally trained lawyers, licensure can be difficult as they may need several years of study to acquire the requisite knowledge of Canadian law, legal system and practice. The Law Society's recent move to introduce an exemption policy for its articling program is an important evolution of its practice and telling of its continued commitment to fair practice for its international educated applicants (IEAs).

Moving forward, my hope is that we can work together to better understand the challenges IEAs face securing academic certification at the national level and explore, where practical, possible remedies.

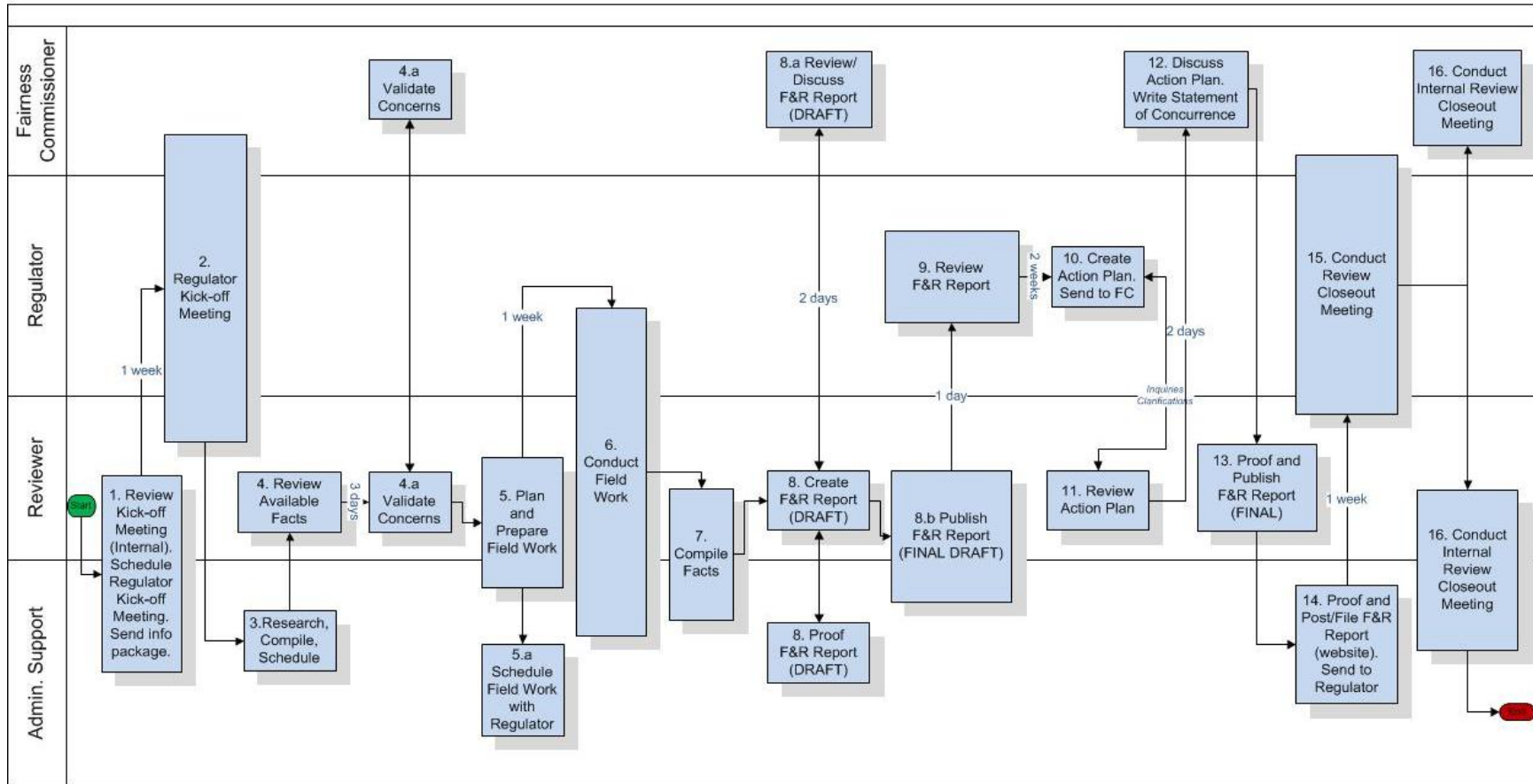


Ximena Munoz

Manitoba Fairness Commissioner

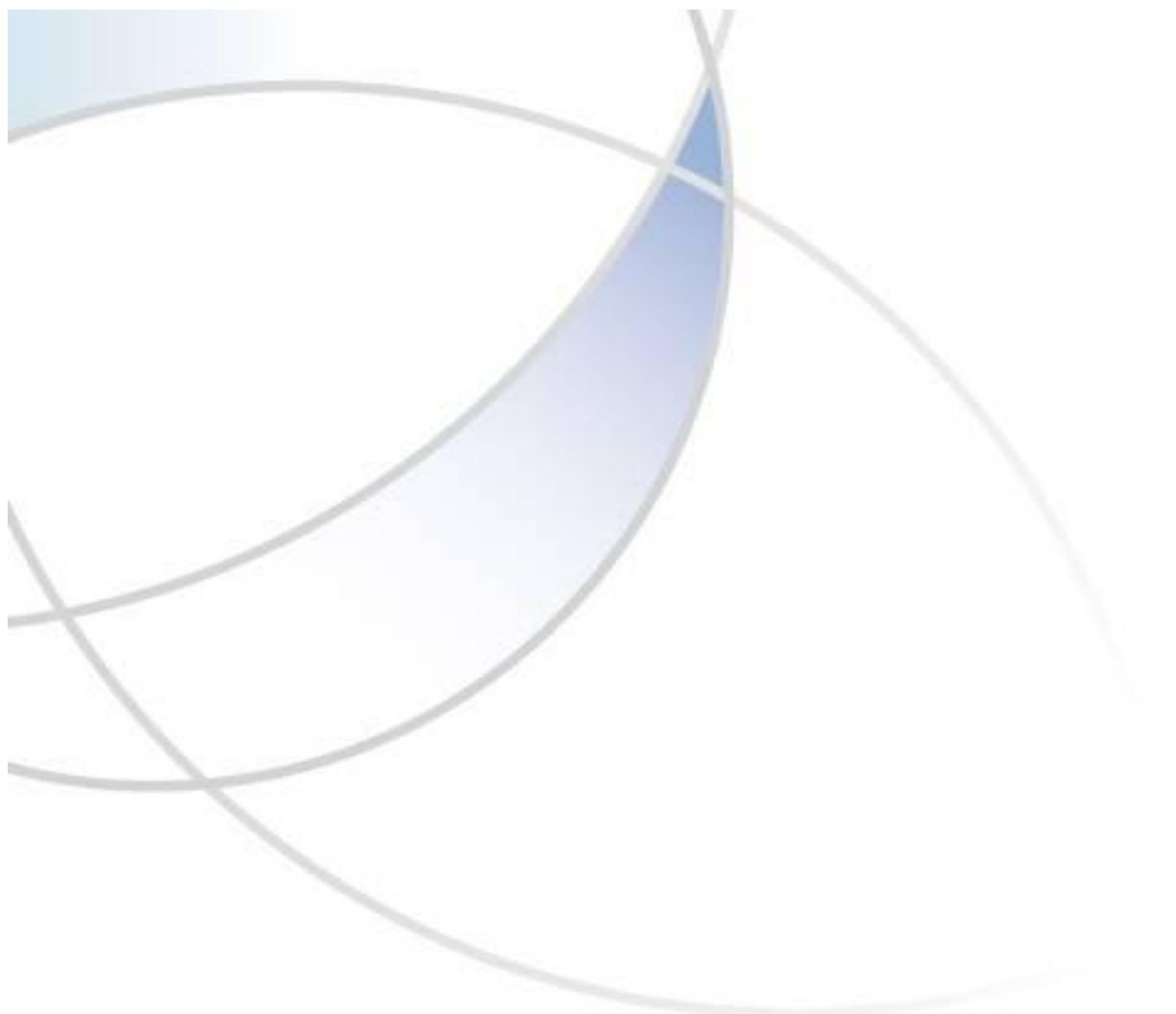
Appendix A

OFFICE OF THE MANITOBA FAIRNESS COMMISSIONER Registration Review Process



Appendix B

LSM's Registration Review		
Activity	Description	Date
Block Meeting	<ul style="list-style-type: none"> Meeting between OMFC, LSM and other regulators in the block of reviews for this period Registration review process presented Review schedule set Documentation requested 	<ul style="list-style-type: none"> January 7, 2013
Kick-Off Meeting	<ul style="list-style-type: none"> Launch of LSM's registration review Key decisions makers from regulator in attendance Collect requested documentation Fieldwork planned 	<ul style="list-style-type: none"> January 17, 2013
Fieldwork	<ul style="list-style-type: none"> Collect information otherwise unavailable through public information and policy documents Clarify information and acquire a more in-depth understanding of policy and practice 	<ul style="list-style-type: none"> February 11, 2013
Findings and Recommendations Report	<ul style="list-style-type: none"> LSM receives a report with the review findings, the Fairness Commissioner's recommendations and a request for an Action Plan Findings and Recommendations Meeting 	<ul style="list-style-type: none"> February 20, 2013 February 22, 2013
Action Plan	<ul style="list-style-type: none"> LSM's Action Plan submitted to OMFC 	<ul style="list-style-type: none"> March 7, 2013
Final Registration Review Report	<ul style="list-style-type: none"> Final report submitted to LSM; report contains the review findings, the Fairness Commissioner's recommendations, LSM's Action Plan, and the Fairness Commissioner's Compliance Statement 	<ul style="list-style-type: none"> March 19, 2013
Registration Review Closeout Meeting	<ul style="list-style-type: none"> Discuss review results & Action Plan Final report uploaded to OMFC's website 	<ul style="list-style-type: none"> April 8, 2013 April 8, 2013



OFFICE OF THE MANITOBA
FAIRNESS COMMISSIONER

301-155 Carlton Street, Winnipeg, MB R3C 3H8

E-mail: omfc@gov.mb.ca

Tel.: 204.945.7353

Fax : 204.948.4712

www.manitobafairnesscommissioner.ca