



**The Law Society of Saskatchewan**

**CRYSTAL FROST-HINZ**

**May 31, 2012**

*Law Society of Saskatchewan v. Frost-Hinz, 2012 SKLSS 7*

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990  
AND IN THE MATTER OF CRYSTAL FROST-HINZ,  
A STUDENT-AT-LAW OF SASKATOON, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE OF THE ADMISSIONS AND  
EDUCATION COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN**

**Hearing Committee Members:**

Greg Stevens (Chair), Laura Lacoursiere, Heather Laing

**INTRODUCTION**

1. In a letter dated April 5, 2012, Student-At-Law Crystal Frost-Hinz (the “Student”) was informed by the Director of Bar Admissions (the “Director”) that she was suspended from the Canadian Center for Professional Legal Education Program (“CPLED”) (sometimes referred to in the *Rules of the Law Society of Saskatchewan* – the “Rules” – as the Bar Admission Program) for an alleged breach of the CPLED Professional Integrity Policy.
2. The letter of April 5, 2012 also informed the Student of her right to appeal her suspension under s. 159(5) of the Rules to the Admissions and Education Committee (the “A&E Committee”), which the Student did in a letter dated April 9, 2012.
3. An appeal under Rule 159(5) allows the A&E Committee to “make a decision on a review of the record, make any enquiry and investigation considered necessary, or conduct a Hearing pursuant to Rule 230.”
4. On April 18, 2012 the A&E Committee convened a special meeting to deal with the Student’s appeal of the decision to suspend her from CPLED. Given the timing and requirements of the CPLED program, a decision on the Student’s suspension was necessary before module 9 (the final, and a face-to-face module) commenced on April 23, 2012. Not to address the Student’s suspension prior to the start of module 9 would essentially result in a *de facto* suspension from CPLED until that module was offered again (anticipated to be April 2013).

5. At its April 18, 2012 special meeting, the A&E Committee passed a motion staying the Student's suspension subject to the holding of a hearing. A hearing on the matter was held June 18, 2012, with the above referred to members of the A&E Committee acting as the Hearing Panel (the "Panel").

6. The Panel reserved its decision following the hearing.

7. At the hearing counsel for both the A&E Committee for the Law Society of Saskatchewan (the "LSS") and the Student requested that the Panel provide a decision on penalty as soon as possible, including in advance of providing written reasons for the decision.

8. The Panel's decision on Penalty was released on June 28, 2012 [TAB 1], with reasons to follow. These are those reasons.

### **JURISDICTION**

9. The Student was, at all times material to this proceeding, a Student-at-Law pursuant to the provisions of *The Legal Profession Act, 1990* (the "Act") as well as the Rules, and enrolled in the CPLED Program.

10. The hearing was constituted pursuant to Rule 159(5) and Rule 230.

11. The Notice of Hearing indicated the hearing was for the purpose of considering the Student's appeal of her suspension from the CPLED program. The Student had been accused of violating the Professional Integrity Policy. Specifically, the Student had been accused of plagiarism. If the Student were found guilty of plagiarism, she would have also breached the CPLED Program Agreement she signed.

12. Among others, the following Rules are relevant to this proceeding:

**159. (1) The form and content of the Bar Admission Program for Saskatchewan shall be set by the Canadian Center for Professional Legal Education (CPLED) and the Bar Admission Program Director in consultation with the [A&E] Committee.**

...

**(3) An applicant for admission to the Bar Admission Program must:**

**(a) be admitted to the Law Society as a student-at-law;**

**(b) hold a Bachelors degree from a common law faculty of law in a Canadian university or a certificate of equivalency from the National Committee on Accreditation;**

**(c) have complied with all administrative requirements set out in the Bar Admission Program Handbook, including payment of the prescribed fee, as fixed by the Benchers under subrule 820(4).**

**(4) The Bar Admission Program Director has authority to discipline or suspend a student-at-law for breach of Bar Admission Program policies or**

for conduct which is contrary to the rules of the Society or the *Code of Professional Conduct*.

(5) The Bar Admission Program Director's decision to suspend or discipline a student-at-law may be appealed to the Committee. The Committee may, in its discretion, make a decision on a review of the record, make any enquiry and investigation considered necessary, or conduct a Hearing pursuant to Rule 230.

**160. (1) In order to pass the Bar Admission Program, a student-at-law shall:**

**(a) attend all face to face sessions and participate fully in all online portions of the Program;**

**(b) submit on time and successfully complete all competency evaluations and assignments;**

**(c) pass any examinations set by the Bar Admission Program Director;**

**(d) comply with the Bar Admission Program Handbook and any additional administrative policies set from time to time by the Society.**

**(2) Students-at-law who do not successfully complete the Bar Admission Program will be required to repeat the Program.**

...

**(4) A student-at-law who has failed to pass the Bar Admission Program may appeal to the Committee. The Committee may, in its discretion, make a decision on a review of the record, make any enquiry and investigation considered necessary, or conduct a Hearing pursuant to Rule 230.**

### **PROFESSIONAL INTEGRITY POLICY**

13. In addition to being governed by the Rules, students-at-law must also adhere to the policies set in relation to the CPLED Program, specifically the Professional Integrity Policy.

14. The Professional Integrity Policy requires all students to, *inter alia*, "conduct themselves with the honesty and professional integrity expected of a lawyer", states that competency evaluations (past and present) are strictly confidential, that all competency evaluations/submissions must not be discussed or disclosed except as authorized, and that "all Assignment Submissions and Competency Evaluation Submissions must be the student's own original work." The policy explicitly prohibits plagiarism.

### **CPLED PROGRAM AGREEMENT**

15. Upon each student's entry into the CPLED Program, he or she is required to sign the CPLED Program Agreement. This agreement includes the following clauses:

- **I will be bound by CPLED's Professional Integrity Policy;**
- **All work I submit to CPLED will be my own original work;**
- **Plagiarism is 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 Saskatchewan for investigation and disciplinary action.**

**PROCEDURAL MATTERS**

16. The A&E Committee for the LSS was represented by Tim Huber and the Student was represented by Karen Prisciak, Q.C. The Student was in attendance at the hearing.

17. As a preliminary matter the Chair of the Panel identified a clerical error. The Notice of Hearing referenced Rule 159(7), when Rule 159(5) should have been referenced. Further, Rule 230 requires notice for a hearing to be provided not less than 30 days in advance of the hearing, which did not happen in the current situation.

18. Neither counsel took issue with the clerical error, the abridged notice, or had any preliminary motions or objections to any aspect of the hearing, including its jurisdiction and composition of the Panel.

19. An Agreed Statement of Facts and Admissions (the “ASF”) between the Student and the LSS was filed and each counsel filed written submissions on Penalty. In their oral submissions counsel reviewed circumstances surrounding the Student’s suspension and argued on Penalty. The Panel allowed Ms. Frost-Hinz’s request to address the Panel.

20. Both counsel requested that the Decision in this matter redact unnecessary personal details relating to those other than the Student.

**BACKGROUND**

21. The CPLED program is one of the cornerstones of the qualification process as a lawyer and is a prerequisite to being admitted as a new lawyer in Saskatchewan. The 2011-2012 CPLED Program ran from August 15, 2011 through April 27, 2012 and was made up of a combination of three face-to-face and six online modules designed to teach and test the competence of prospective lawyers in a variety of areas. Modules #1, #4 and #9 are week-long face-to-face sessions dealing with skills such as chambers advocacy, interviewing skills, and negotiations. Modules #2, #3, #5, #6, #7 and #8 are online modules dealing with skills such as legal research and writing, written advice and advocacy, drafting (contracts, wills and pleadings), and practice management. Each module focuses on a different area of law.

22. The Ethics and Professionalism Competency Evaluation (the subject matter of the Student’s breach of the CPLED Integrity Policy) is a 5-part exercise spread over a series of online modules and incorporated into the scenarios for competency evaluations which deal primarily with another skill. For example, the competency evaluation for the Wills Module includes an ethical issue within the scenario and students are asked to provide both a properly drafted will along with a separate ethics memo. The purpose of including ethical issues within larger scenarios is to test the ability of a student to identify ethical issues.

23. In order to complete the CPLED program successfully, students must attend all portions of the face-to-face sessions, complete all assignments, and obtain a passing grade of

“Competency Demonstrated” on all competency evaluations. Competency evaluation grades are assessed based on criteria drawn from the Competency Profile, a key element of the CPLED Program, which outlines the skills, knowledge, and behaviour expected of a competent lawyer.

24. If a student receives a grade of “Competency Not Yet Demonstrated” (a failing grade) on any competency evaluation, he or she is required to write a supplemental competency evaluation. The supplemental assignment can be completed by the student at any time. If a student is unable to attain a passing grade on a supplemental competency evaluation, he or she is required to repeat the entire CPLED course.

### **PARTICULARS OF CONDUCT**

25. The following Particulars of Conduct have been taken verbatim from the ASF, with the exception of redacting the name of the Student’s husband and making the referenced **TAB** numbers consistent with this decision. The Particulars of Conduct from the ASF begin at para. 26, continuing until para. 36.

26. The chain of events leading to the Student’s suspension from the CPLED Course began with her submission of Part 4 of the Ethics and Professionalism Competency Evaluation (the “Submission”) on February 27, 2012.

27. On March 2, 2012 Dina Evans, the Bar Admission Officer, noted that the Submission contained a discrepancy between the header (which contained the Student’s student number) on page one and the header on the following pages. The student number used on page one belonged to the Student. The student number used on all subsequent pages of the assignment was determined by Ms. Evans to be the student number given to the Student’s husband, [husband’s name], a lawyer and former CPLED student enrolled in the prior year’s 2010-11 CPLED Program. Ms. Evans brought this discrepancy to the attention of the Director.

28. The Student’s assignment and the assignment completed by [husband’s name] the previous year were reviewed and compared. The comparison revealed that the Student had plagiarized a portion of her husband’s old assignment. Attached at **Tab [2]** is a copy of the Student’s assignment followed by a copy of her husband’s assignment for the previous year.

29. The evidence of plagiarism in the Student’s assignment, aside from the inclusion of the [husband’s name] Student Number in the header of the second and third pages, can be seen in the conclusions of both assignments reproduced below:

#### **[husband’s name] 2010-2011 Assignment**

- a. *To conclude, the best course of action will be to request express authorization from Derek to communicate the actual facts related to this matter to Mrs. Olfram. If such authorization is provided, we will be able to inform Mrs. Olfram of the true facts of the case when she meets with us to discuss further retainer payments. However, if Derek refuses to provide such authorization, we must maintain the confidence that we owe to Derek as the client for whom we are rendering professional services.*

### Crystal Frost-Hinz 2011-2012 Assignment

- b. *Conclusion: The best course of action is to request express authorization from Sean to communicate the actual facts related to this matter to Yuri. If such authorization is provided, we will be able to inform Yuri of the true facts of the case when he meets with us to discuss further retainer payments. If Sean does not consent to disclosure, we must maintain the confidence that we owe to him as the client for whom we are rendering professional services.*

30. On March 5, 2012 the Director obtained copies of all of the assignments completed by [husband's name] from 2010-11 CPLED Course and ran an analysis using WCopyfind (software designed to detect plagiarism) to determine whether there were any other instances of plagiarism between the Student's submissions in the 2011-12 Program and her husband's submission in the 2010-11 Program. No other instances of plagiarism were detected.

31. On March 20, 2012 the Director sent a letter to the Student asking her to meet with him. Prior to the meeting the Student was informed that the subject matter of the meeting was her submission for Part 4 of the Ethics and Professionalism Competency Evaluation. The meeting between the Student and the Director occurred on March 26, 2012 at 4:00 pm.

32. At the outset of the interview, the Student acknowledged that once she was informed about the specific assignment the Director wanted to meet with her about, she "knew what had happened". The Student admitted to completing the introduction, facts, issues, law and analysis before looking at her husband's assignment to confirm she had reached the correct conclusion. The Student is uncertain whether she pasted her work over her husband's document or copied his document into a new document and copied her assignment into the document.

33. When confronted by the Director about her plagiarism the Student stated that she had not had problems with any of the previous assignments and had not previously looked at her husband's work. She indicated that she had not found the CPLED assignments to be particularly difficult. During the assignment in question she was busier than usual as a result of various work demands and due to the fact that she was clearing her desk in anticipation of a family vacation. Having less time and more stress than usual, she made the decision to consult the conclusion portion of her husband's old assignment.

34. Attached at **Tab [3]** is the Student's email to the Director dated April 2, 2012.

35. On April 5, 2012 the Director, in consultation with the Executive Director of the Law Society, Thomas Schonhoffer, Q.C., suspended the Student from the CPLED program.

36. The Student appealed the Director's decision to suspend her to the Admissions and Education Committee. The application included a request that the suspension be stayed to allow her to complete the remaining module of the CPLED program pending the formal hearing of her appeal. The application for a stay of suspension was granted by the Admissions and Education Committee on April 18, 2012 and a hearing was scheduled. The Student would be allowed to complete the final module of the CPLED program but would have her mark withheld pending her hearing.

## **COMPARABLE CASES**

37. There was limited jurisprudence brought to the Panel’s attention regarding students engaging in unethical behaviour, such as improper collaboration and plagiarism, during bar admission program assignments or assessments.

38. A review of how such behaviour has been dealt with in Manitoba, Saskatchewan, Alberta (all of whom use the CPLED program) and British Columbia (where a 10 week Professional Legal Training Course (“PLTC”) is part of its 12-month Law School Admission Program – “LSAP”) was presented by both counsel.

39. In Manitoba, for the most part, all cases of breaches of the CPLED integrity policy in have resulted in the students receiving a failing grade on the assignment or assessment in question, with a supplemental evaluation then being required. Depending in the circumstance, other components of the sanction have included a note being placed on the student’s file, the requirement to complete a remedial course in professional responsibility before being “called to the bar”, and the students being required to inform their principals of their breach.

40. Three cases of improper collaboration in British Columbia, cited in British Columbia’s Bencher’s Bulletin in 2002 (No. 3), 2003 (No. 3), and 2010 (No. 3), were referenced. Key aspects of the limited available information include:

41.

- i. 2002 – Two students collaborated on two written assessments. While recognizing their conduct was prohibited, the students stated that at the time they did not think they were contravening policy. Both students had their enrollment in the LSAP extended by six months, their behaviour was the subject of an anonymous publication in the Bencher Bulletin, and one of the students needed to repeat the entire PLTC “while the other was required to complete the remedial assessments that the student had failed”;
- ii. 2003 – Two students acknowledged they had collaborated on one written assessment. Each student had their enrollment in the LSAP extended by one month; both were required to redo the written assessment, and each needed to “write an anonymous memorandum to be shared with future PLTC students”, including a statement on “how he or she was affected by the process”; and
- iii. 2010 – Two pairs of students “acknowledged that they had engaged in prohibited collaboration on two of the written PLTC assessments.” The first set of students stated they had not intended to cheat but their general discussion of assessments progressed to more specific discussions. The students expressed regret and made assurances their collaboration was an isolated incident. The second set of students stated that their history of preparing for class exercises and assignments continued into assessments. They took responsibility for their behaviour.

Each student had his/her enrollment in the LSAP extended by three months, was required to redo the two written assessments, and write an anonymous memo, including how the process affected him/her, which would be shared with future PLTS students.

42. Counsel for the LSS and the Student both discussed one case from Alberta involving a breach of CPLED's integrity policy, cited as the *Law Society of Alberta v. Cattermole*, [2008] L.S.D.D. No. 168.

- i. *Cattermole* involved a student in CPLED plagiarizing two paragraphs and one heading from an assignment submitted by a colleague during the previous CPLED program offering. When discussing the alleged plagiarism with the Deputy Director of CPLED and/or her Principal over two meetings occurring on one day, Ms. Cattermole denied her plagiarism on two occasions but admitted her guilt later that same day.
- ii. As a consequence of her integrity breach, Ms. Cattermole was expelled from the CPLED program and fired from her articling position. In the aftermath of her expulsion, including the length of time the discipline process took, Ms. Cattermole ultimately applied to start her articles in another province some two years later, contingent on the outcome of the discipline process in Alberta.
- iii. Given her expulsion from CPLED, the subsequent loss of her articling position, and the resultant two-year delay to her career, Ms. Cattermole's adjudicated sanction was a reprimand and an order to pay costs in the amount of approximately \$3,000 within three years.
- iv. The Decision of the Hearing Committee in *Cattermole* relates a number of persuasive mitigating circumstances, and states at para. 17 "But for the extenuating circumstances, this Committee would have sanctioned Ms. Cattermole for this breach of ethics by giving her either a lengthy suspension or disbarment."

43. Saskatchewan has one incident on record where students were accused of breaching the integrity policy. This matter is referenced as *LSS v. DeMaria and Mercier* or *DeMaria/Mercier*.

- i. This case involved the two students appealing their suspension from the CPLED program for an alleged breach of the Professional Integrity Policy.
- ii. The students were found to have collaborated in a number of ways over the course of two modules (taking place over a number of months) on both assignments and competency evaluations. Generally, Mr. Mercier would complete a draft answer and Mr. DeMaria would review, edit, and/or elaborate on the answer, resulting in both students deriving benefit from the other and violating the integrity policy.
- iii. Mr. Mercier self-reported the events and both students stated they were remorseful.
- iv. By way of sanctions, the students were each required to redo the modules, assignments, and competency evaluations on which they collaborated (when the modules were offered in the subsequent CPLED program). Mr. DeMaria was required to write an essay on lessons learned and Mr. Mercier was required to either write an essay or make a presentation at the next CPLED offering. They were each fined \$250, assessed costs of \$500, with the Committee noting at para. 34 that it "considers it appropriate that a note be placed on each student's file at the Law Society with a copy of this decision for the information of the



Admissions and Education Committee when assessing each of the applications for admission”. Mr. DeMaria was not eligible to apply for admission as a lawyer for two and one-half months after he successfully completed the required modules, with Mr. Mercier having his ability to apply for admission delayed by two weeks following his successful completion of the modules.

- v. The Hearing Committee was fully aware that the redoing of the CPLED modules at the next available offering, going so far as to account for the time it would likely take to mark the modules [see para. 10 of the Addended Decision], would result in a total delay of application for entry of approximately 13 months for Mr. DeMaria and 10 months for Mr. Mercier.

### **SUBMISSIONS ON SENTENCING**

44. There was no joint submission on penalty and the existing range of sanctions for breach of integrity on “bar admissions” programs were noted to be very wide.

45. Both counsel rejected as insufficient for the current situation Manitoba’s approach, which was characterized as simply giving a failing grade for a breach and then requiring the offender to write a supplemental assignment/assessment.

46. Both counsel rejected as overly severe for the current situation the two-year delay in *Cattermole* – be the delay a function of penalty or process.

47. Both counsel submitted that the most appropriate sanction in the current case is a delay in the Student’s ability to apply to become a lawyer. They disagreed on the length of delay.

48. After rejecting *Cattermole* as too severe, and the approach often used in Manitoba as insufficient, the length of delay to apply for admission ranges from one month (British Columbia) to 13 months (Saskatchewan).

49. The appropriate quantum of delay in admission can be ascertained by examining distinguishing features between the cases left to consider and adjusting for mitigating and aggravating factors.

50. Counsel for the LSS submitted:

- i. The penalties in *DeMaria/Mercier* were more severe than deserved in the current situation because Mr. DeMaria’s and Mr. Mercier’s cheating occurred over a number of months, involved multiple assignments, and at least one competency evaluation (At the time, each CPLED module was comprised of three assignments and one competency evaluation. Mr. Mercier self-reported before the completion of the second module where cheating was questioned.). In the current case the Student cheated on only one of the five assignments that comprised one competency evaluation – ironically in Ethics and Professionalism. However, she did not self-report;
- ii. The range of delay seen in the cases from British Columbia (one – six months) is more appropriate as those cases usually involved one or two instances

of inappropriate collaboration or plagiarism. In most of those cases the students did not realize their collaboration had reached an inappropriate level. As such, self-reporting was not a consideration;

- iii. Integrity offences are often the most serious violations for those in the legal profession and the LSS must be seen to uphold its duty of public protection by not taking such offences lightly;
- iv. Both specific and general deterrence are important (although general deterrence was offered as more important than specific deterrence in this case); honour and trust of those practising in the legal system is paramount; and given that the practice of law often involves extreme stress, the presence of personal and professional stress does not excuse a lapse of integrity;
- v. An appropriate sanction would require the Student to complete a supplemental competency evaluation on the section where she was found to have plagiarized and that her application for entry as a lawyer with the LSS be delayed in the range of three – six months after all qualifications had been met.

51. Counsel for the LSS took no position on costs or a fine and made no recommendations for the penalty having any other feature.

52. For the most part, counsel for the Student agreed with the LSS's counsel's analysis of the various cases although she differentially emphasized aspects of comparative cases and the Student's personal and professional circumstances.

53. The ASF contains a rendering of the Student's history and personal circumstances that were in play for the Student when she cheated. These features were argued to be mitigating circumstances, and include the following:

- i. During her academic career the Student was not disciplined for academic infractions and had academic success, evidenced in part by her being a managing editor of *The Saskatchewan Law Review*;
- ii. Prior to commencing her articles (*circa* June 2011), a close and immediate family member of the Student was diagnosed with a potentially terminal medical condition. Counsel for the student noted in a submission of "relevant personal circumstances" that "[t]his was a very dynamic traumatic diagnosis for the Student as her family was consumed with the consequences of her [family member's] medical condition";
- iii. In November 2011, after the family member's chemotherapy had finished, the Student and her family planned a one week vacation for March 2012 in Cuba that would include the Student's entire family and their spouses. The trip would celebrate the end of the family member's radiation treatments (scheduled to end in January 2012);
- iv. Around the time the Student was completing the impugned CPLED assignment she was "overwhelmed with the work required of her as an articling Student", which included being the only articling student in a firm of 17 lawyers, a request to perform work (the preparation of a paper) for the managing partner

for the first time, in a complex area of the law, as well as having other work assignments;

- v. She was feeling anxious and “very aware of her responsibilities to complete as much work as possible prior to leaving for the vacation scheduled to celebrate the end of her [family member’s] radiation treatments”;
- vi. The Student did not want to appear incapable of handling a heavy workload, did not know how to communicate this to the lawyers at the firm, and wanted to be hired back after completion of her articles;
- vii. Following her suspension from CPLED, the Student’s offer of employment as a lawyer after her articles were complete was withdrawn, her husband received a letter from the LSS regarding the Student’s assignment<sup>1</sup>, thus creating additional stress for her; and
- viii. Various, the Student is reported to be “experiencing extreme remorse and is embarrassed by the impact her actions have had on herself, her husband and her colleagues at her articling law firm”, “has recognized that her poor judgment in accessing her husband’s assignment was affected by her work stresses from her work load as well as the time pressures of completing the assignment and planning for the celebratory family vacation. She has contacted Lawyers Concerned for Lawyers and by the date of this hearing will have attended three individual counselling sessions. As well, the Law Society has automatically referred her to the family services program for additional assistance”, the suspension and firing have “been devastating to the Student .... her circumstances have caused additional stress on her family. She regrets and is remorseful about her conduct.”, and “The Student appreciates that honesty and integrity are integral to her role as an Articling Student and a lawyer. She has learned from this experience that she needs to monitor her stress levels and needs to develop healthy coping strategies. She expects to learn this from her counselling sessions”.

54. Counsel for the Student submitted:

- i. The Student’s behaviour was misguided, acknowledged the Student’s behaviour was plagiarism, and noted that the Student did not self-report. The Student was noted to be humiliated;
- ii. Plagiarism is cheating and the Student will have an indelible stain on her record as a result of her actions;
- iii. Mr. Mercier and Mr. DeMaria engaged in “collusion”, which greatly aggravated the severity of penalty merited and notes it was agreed in this case that the Student did not collude with anybody; and
- iv. The penalty for Mr. Mercier and Mr. DeMaria ought to be viewed as delays of only one and three months (although recognizing the need to redo modules when next available resulted in a longer delay).

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<sup>1</sup> It was reported that the LSS took no further action regarding the Student’s husband as a consequence of his wife accessing his assignment.

55. Counsel for the Student submitted that a supplemental competency evaluation and a one-month delay in the Student's ability to apply for entry as a lawyer with the LSS after the module in question is complete, would be an appropriate penalty. When offering a one-month delay as appropriate, counsel for the Student argued that the actual delay would be a further six to eight weeks while the supplemental assignment was arranged, completed, and marked.

### **DECISION**

56. The Panel noted that all of the evidence before it was contained in the ASF. While we are bound to consider in our deliberations on sentencing only the facts we have before us, we are free to consider and weigh these facts as we see fit. Determining appropriate sanctions is more than a black and white matter.

57. The Panel notes, for example, that while not identified by the plagiarism detection software as an instance of plagiarism, the following similarity in the last paragraph before the conclusion in the Student's and her husband's assignments respectively:

- i. Crystal Frost-Hinz's 2011-2012 Assignment  
*...it is likely in everyone's best interests to request that Sean provide **express authorization to provide the information** disclosed by him to his father in order to keep everyone involved in this matter fully informed.* [emphasis added]
- ii. [husband's name] 2010-2011 Assignment  
*... it may be in everyone's best interests to request from Derek **express authorization to provide the information** communicated to us by him to Mrs. Olfram in order to keep everyone involved in this matter fully informed.* [emphasis added]

This wording, found where it is, raises questions around about the intent behind aspects of the Student's email at **TAB 3**.

58. The breach the Student committed is serious. It is a breach of integrity. We find the following reasoning in *Cattermole* to be relevant in the instant case:

28. It is clear from the evidence and the admissions that Ms. Cattermole is guilty of conduct that discredits the profession and is deserving of sanction. If the public and other lawyers cannot rely on the honesty and integrity of a lawyer the entire underpinnings of the legal profession are at risk.
29. Next to stealing, cheating and lying are the most egregious activities a lawyer can engage in. It also strikes at the foundation of the CPLED course as that course has been changed such that a large proportion of the courses and evaluations is now conducted online and the integrity of the system depends, to a large extent, on students being ethical and submitting their own work.
30. There is no doubt about Ms. Cattermole's knowledge of the rules. She signed an agreement ...

59. While the Student did not steal or lie, she did cheat and break a written agreement.

60. In a similar vein, the importance of integrity and upholding public expectations is underscored in *DeMaria/Mercier*, where at para. 22 it was stated:

In 2007, the Law Society celebrated 100 year of being a Law Society in Saskatchewan. The theme for the year was “100 Years of Integrity”. This was a reflection of the Society’s and the members’ commitment and belief in a lawyer being part of a profession of integrity. The public expects integrity at all times and all members require it in order to perform their professional duties. Any breach of integrity by a lawyer or student-at-law, must be, taken very seriously. The facts here give the Committee serious concern, particularly given that Mr. Mercier and Mr. DeMaria have not been admitted to the Bar. These individuals have let down the entire profession, past and present members. They have acted in a way that causes the public to question the integrity of all lawyers.

61. The Panel accepts the notion that a delay of entry into the profession should be a major component of the sanction in cases similar to the current situation.

62. It would be difficult to imagine a case where improper collaboration or plagiarism occurred and the matter is treated in a manner similar to that of receiving a failing grade i.e. offered a supplemental. On the other hand, while disbarment can be considered an option (see *Cattermole*), the instant case does not warrant such consideration. Not even in *DeMaria/Mercier*, where the behaviour was more odious than the present case, was the sanction close to disbarment.

63. Further, we agree that the resultant effective delay of two years in the *Cattermole* would be too severe in the current situation. The seriousness of integrity breaches, however, can be taken from the Hearing Committee’s decision in *Cattermole* wherein but for the extenuating circumstances, the sanction would have been either lengthy or a disbarment. As adjudged, the reprimand and costs found in *Cattermole*, are not too instructive in the current circumstance. We are left to wonder, given the extenuating circumstances offered, what a “lengthy” penalty would have been.

64. The key considerations in the determination of penalty, as found in the cases from British Columbia and *DeMaria/Mercier*, centre around mindful intent, the number of occurrences of cheating (which is usually likely highly correlated with duration of conduct), and whether there was self-reporting.

65. Counsel for the Student opines that *DeMaria/Mercier* received as significant a sanction as they did (which she characterizes as three and one month respectively) because they colluded.

66. As mentioned previously, we reject the notion that the sanction in *DeMaria/Mercier* can be legitimately characterized as an *in toto* sanction of one and three months. However their behaviour is characterized, the Hearing Committee clearly intended a 10 and 13 month delay of entry for Mr. Mercier and Mr. DeMaria respectively.

67. When advancing her oral argument on “collusion” being an aggravating factor, counsel for the Student focused on how collusion is more odious because it purposefully involves another in the wrong doing. Her client is free from that element of collusion.

68. While we agree that collusion will usually be an aggravating factor, we disagree that the reason collusion is usually aggravating is simply because it involves another person in some “illegal or deceitful<sup>2</sup>” purpose.

69. Unless the collusion was the result of undue influence, coercion, or was a larger scheme involving several people (of which there is no evidence offered in any case before us), the aggravating feature we see in collusion is not that two people are involved but that collusion, by definition, is directed toward an “illegal or deceitful purpose”. This speaks to intent. The Student cheated on purpose and knowingly broke her signed agreement.

70. While *DeMaria/Mercier* is not referred to as collusion, it must certainly be considered collusion. It is reasonable to assume, given the breadth, depth, and duration of their discussions and document sharing that they knew their behaviour was prohibited. Their behaviour was deceitful, to say the least.

71. All cases cited from British Columbia are framed as “collaboration” – which, similar to “collusion” – involves more than one person but the purpose is usually focused on cooperation for “an intellectual endeavor<sup>3</sup>”. All students guilty of inappropriate conduct in the British Columbia cases, where the information is offered, indicate they did not know or intend for their behaviour to be a transgression. A breach involving others is not always collusion.

72. We agree that *DeMaria/Mercier* deserved greater sanction because it occurred over a number of months and a number of assignments, including at least one competency evaluation. Mr. Mercier self-reported and was given credit for that behaviour (see para. 32), whereas Mr. DeMaria did not.

73. The cases from British Columbia involve collaboration gone too far on one or two assessments. There is no indication of self-reporting in these cases (although all are reported to have “noted” or “acknowledged” their violation) but self-reporting would be rare in cases where people do not think there is wrong-doing. In the instant case, the Student did not self-report.

74. As might be expected, all parties in the cases cited express regret, as does the Student.

75. We are not persuaded that the Student’s stress and job loss subsequent to her being found cheating are significant mitigating factors. These reactions should be reasonably anticipated when students-at-law are found to have breached integrity conditions and their future as a lawyer is in question.

76. We have great sympathy that a family member close to the Student was afflicted with a serious medical condition. We do not, however, find that circumstance to be a reasonable

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<sup>2</sup> Merriam-Webster on-line dictionary, July 26, 2012. <http://www.merriam-webster.com/dictionary>

<sup>3</sup> Ibid.

mitigating factor some seven or eight months later when time became short before taking a celebratory vacation.

77. Similarly, stress and work overload are common experiences for articling students and lawyers. No evidence was offered that this Student had greater work demands than any other student. Being one articling student in a firm of 17 lawyers says nothing about how much work was expected. Being overwhelmed in the days before a trip planned some four months in advance, given the CPLED schedule was also known widely for months, raises the spectre of a lack of planning and organization being more causative than work overload.

78. We note favourably that the Student was a good student, has no record of previous cheating, and did not find CPLED to be particularly difficult. If the assignments were not found difficult, however, it begs the question of how much real benefit there could have been after having “created my own document independently” (see **TAB 3**) in looking at her husband’s document, “only to ensure that my conclusions were sufficient”. Apparently the Student found her own conclusions lacking.

79. We are also heartened that the Student recognizes that some duration of counseling might be of assistance. The ability to deal with stress, communicate one’s needs effectively, and balance workloads are valuable for all people, and invaluable for those in the practice of law.

80. We are hopeful that the consequences surrounding the Student being caught cheating, and our sanction, will be sufficient specific deterrence. One instance of tremendously poor judgment, in the face of a previously unblemished record, is typically not sufficient to call into question one’s character. A lawyer must have, and be seen by the public to have, good character. Two instances of integrity breaches, however, might be sufficient to draw into question a lawyer’s character.

81. As suggested by counsel, we believe the correct penalty is to be found between one and thirteen months, at the nexus of what the dearth of similar cases can offer in terms of intent, number of occurrences, self-reporting, and other significant considerations.

82. Considering all factors, including that the Student was aware that her behaviour was cheating and a breach of an agreement, that the incident was her only occurrence, and that she did not self-report, we have determined the following penalty to be appropriate.

### **ORDER**

83. The substantive portion of the written Penalty follows:

The penalty for the Student, in reference to the matters under consideration in the Notice of Hearing dated May 31, 2012, as amended at the Hearing, is as follows. The Student shall:

- i. Be required to write a Supplemental Competency Evaluation for the Ethics and Professionalism Competency Module of the CPLED program as soon as such can be arranged by the Director of Bar Admissions;

- ii. Contribute to the costs of the hearing in the amount of \$500.00, with the requirement that this amount be paid prior to the Student being allowed to make application for admission as a lawyer with the LSS; and
- iii. Be eligible to apply for admission as a lawyer with the LSS three months after the Director of Bar Admissions has notified the student that she has successfully completed all aspects of the CPLED program.

84. As in *DeMaria/Mercier*, our decision on the length of delay of entry to apply for admission as a lawyer took into account that the student was to be unemployed two days after the hearing (corresponding to the end of her articles), the time it would take to release the penalty portion of this decision (anticipated at the Hearing to be released within no more than 10 days), thereby allowing “redo” requirements to be initiated (should that be an option in the Penalty), and a reasonable estimate of the minimum time it would take to complete a “redo” (i.e. arrange, complete, and have the assignment marked) being as short as one week or so.

85. It will be recalled that counsel for the Student had recommended a delay of one month, on the basis there would be an additional time lag of some six to eight weeks before any redo requirements could be met and the delay start.

86. Following cost awards in *DeMaria/Mercier* and *Cattermole*, we determined it appropriate to require the Student to make a contribution towards the cost of this process.

Dated at the R.M. of Corman Park, in the Province of Saskatchewan, this 6<sup>th</sup> day of August, 2012.

“Dr. Greg Stevens”

Chair

### **AGREED STATEMENT OF FACTS AND ADMISSIONS**

#### **JURISDICTION**

87. Crystal Frost-Hinz (hereinafter the “Student”) was, at all times material to this proceeding, a Student-at-Law pursuant to the provisions of *The Legal Profession Act*, 1990 (hereinafter the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”), enrolled in the CPLED Program sometimes referred to in the Rules as the Bar Admission Program.

88. This proceeding is an Appeal pursuant to Rules 159(5) and 230 in relation to a decision of Samuel Bergerman, the Director of Bar Admissions (hereinafter the “Director”), to suspend the Student from the CPLED Program. The suspension occurred on April 5, 2012 as a result of the Director’s belief that the Student had breached the CPLED Professional Integrity Policy in relation to her work on the Ethics and Professionalism Competency Evaluation. A letter from the Director to the Student advising of the suspension is attached at **Tab 1**. Attached at **Tab 2** is a copy of the CPLED Professional Integrity Policy. The allegations against the Student also



represent a breach of the CPLED Program Agreement signed by all students. A copy of the Student's signed Program Agreement is attached at **Tab 3**.

89. After an application by the Student to the Admissions and Education Committee, the suspension imposed by the Director was lifted to the extent required for the Student to complete the remainder of the CPLED Course pending this hearing by a panel of the Admissions and Education Committee in relation to her conduct.

### **BACKGROUND**

90. The CPLED program is one of the cornerstones of the qualification process and is a prerequisite to being admitted as a new lawyer in Saskatchewan. The 2011-2012 CPLED Program ran from August 15, 2011 through to April 27, 2012 and was made up of a combination of 3 Face-to-Face and 6 Online Modules designed to test the competence of prospective lawyers in a variety of areas. An excerpt from the 2011-2012 CPLED - Guide to Articling in Saskatchewan including a description of the CPLED Course and the Program Schedule for the 2011-2012 CPLED Course is attached at **Tab 4**. Modules #1, #4 and #9 are week-long Face-to-Face sessions dealing with skills like chambers advocacy, interviewing skills and negotiations. Modules #2, #3, #5, #6, #7 and #8 are Online Modules dealing with skills such as legal research and writing, written advice and advocacy, drafting (contracts, wills and pleadings) and practice management. Each Module will also focus on a different area of law such as Debtor Creditor, Wills and Estates, Family Law, Real Estate, Business and Civil Litigation.

91. The Ethics and Professionalism Competency Evaluation (the subject matter of the breach of the CPLED Integrity Policy) is a 5 part exercise spread over a series of online modules and incorporated into the scenarios for Competency Evaluations which deal primarily with another skill. For example, the Competency Evaluation for the Wills Module would include an ethical issue within the scenario and students would be asked to provide both a properly drafted will along with a separate ethics memo. The purpose of including ethical issues within larger scenarios is to test the ability of a student to identify ethical issues.

92. The Online Modules are intended to be completed by the students either during office hours or on their own time. Each Online Module is generally three weeks long and are comprised of three units including 2 Assignments and 1 Competency Evaluation. Students are provided with background readings, learning exercises and rich feedback on their Assignments which assist them in preparing for Competency Evaluations. One week is allotted to complete each unit within a Module with deadlines set in accordance with the CPLED Program schedule. Students are required to assimilate information and facts and perform necessary research in order to successfully complete the Assignments and Competency Evaluations.

93. Support for each student is available through the use of an online "Learning Group Facilitator", usually a lawyer volunteer practicing in the specific area of law. In addition to the Learning Group Facilitator, CPLED students have access to a comprehensive set of procedural and substantive resource materials as well as a variety of other reference materials.

94. In order to successfully complete the CPLED program, students must attend all portions of the face-to-face sessions, complete all Assignments and obtain a passing grade of

“Competency Demonstrated” on all Competency Evaluations. Competency Evaluation grades are assessed based on criteria drawn from the Competency Profile, a cornerstone of the CPLED Program, which outlines the skills, knowledge and behavior expected of a competent lawyer.

95. If a student receives a grade of “Competency Not Yet Demonstrated” (a failing grade) on any Competency Evaluation, they are required to write a Supplemental Competency Evaluation. The Supplemental Assignment can be completed by the Student at any time. If a student is unable to attain a passing grade on a Supplemental Competency Evaluation, they are required to repeat the entire CPLED course.

### **PARTICULARS OF CONDUCT**

96. The chain of events leading to the Student’s suspension from the CPLED Course began with her submission of Part 4 of the Ethics and Professionalism Competency Evaluation (the “Submission”) on February 27, 2012.

97. On March 2, 2012 Dina Evans, the Bar Admission Officer, noted that the Submission contained a discrepancy between the header (which contained the Student’s student number) on page one and the header on the following pages. The student number used on page one belonged to the Student. The student number used on all subsequent pages of the assignment was determined by Ms. Evans to be the student number given to the Student’s husband, [X], a lawyer and former CPLED student enrolled in the prior year’s 2010-11 CPLED Program. Ms. Evans brought this discrepancy to the attention of the Director.

98. The Student’s assignment and the assignment completed by [X] the previous year were reviewed and compared. The comparison revealed that the Student had plagiarized portions of her husband’s old assignment. Attached at **Tab 5** is a copy of the Student’s assignment followed by a copy of her husband’s assignment for the previous year.

99. The evidence of plagiarism in the Student’s assignment, aside from the inclusion of the [X] Student Number in the header of the second and third pages, can be seen in the conclusions of both assignments reproduced below:

#### **[X] 2010-2011 Assignment**

*a. To conclude, the best course of action will be to request express authorization from Derek to communicate the actual facts related to this matter to Mrs. Olfram. If such authorization is provided, we will be able to inform Mrs. Olfram of the true facts of the case when she meets with us to discuss further retainer payments. However, if Derek refuses to provide such authorization, we must maintain the confidence that we owe to Derek as the client for whom we are rendering professional services.*

#### **Crystal Frost-Hinz 2011-2012 Assignment**

*b. Conclusion: The best course of action is to request express authorization from Sean to communicate the actual facts related to this matter to Yuri. If such authorization is provided, we will be able to inform Yuri of the true facts of the case when he meets with us to discuss further retainer payments. If Sean does not consent to disclosure, we must maintain the confidence that we owe to him as the client for whom we are rendering professional services.*

100. On March 5, 2012 the Director obtained copies of all of the assignments completed by [X] from 2010-11 CPLED Course and ran an analysis using WCopyfind (software designed to detect plagiarism) to determine whether there were any other instances of plagiarism between the Student's submissions in the 2011-12 Program and her husband's submission in the 2010-11 Program. No other instances of plagiarism were detected.

101. On March 20, 2012 the Director sent a letter to the Student asking her to meet with him. Prior to the meeting the Student was informed that the subject matter of the meeting was her submission for Part 4 of the Ethics and Professionalism Competency Evaluation. The meeting between the Student and the Director occurred on March 26, 2012 at 4:00 pm.

102. At the outset of the interview, the Student acknowledged that once she was informed about the specific assignment the Director wanted to meet with her about, she "knew what had happened". The Student admitted to completing the introduction, facts, issues, law and analysis before looking at her husband's assignment to confirm she had reached the correct conclusion. The Student is uncertain whether she prepared her work over her husband's document or copied his document to her assignment and posted her assignment over the document

103. When confronted by the Director about her plagiarism the Student stated that she had not had problems with any of the previous assignments and had not previously looked at her husband's work. She indicated that she had not found the CPLED assignments to be particularly difficult. During the assignment in question she was busier than usual as a result of various work demands and due to the fact that she was clearing her desk in anticipation of a family vacation. Having less time and more stress than usual, she made the decision to consult the conclusion portion of her husband's old assignment.

104. Attached at **Tab 6** is the Student's email to the Director dated April 2, 2012.

105. On April 5, 2012 the Director, in consultation with the Executive Director of the Law Society, Thomas Schonhoffer, Q.C., suspended the Student from the CPLED program.

106. The Student appealed the Director's decision to suspend her to the Admissions and Education Committee. The application included a request that the suspension be stayed to allow her to complete the remaining module of the CPLED program pending the formal hearing of her appeal. The application for a stay of suspension was granted by the Admissions and Education Committee on April 18, 2012 and a hearing was scheduled. The Student would be allowed to complete the final module of the CPLED program but would have her mark withheld pending her hearing.

#### **PERSONAL CIRCUMSTANCES**

107. The relevant personal circumstances of the Student are set out in the letter attached at **Tab 7**.