



Federation of  
Law Societies  
of Canada

Fédération des ordres  
professionnels de juristes  
du Canada

# National Committee on Accreditation (NCA)

## Policy Manual

In effect March 31, 2023

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**For additional information about the NCA and its processes, and to access the required forms, please visit our web site (<https://nca.legal>)**



## **ASSESSMENT POLICY**

### **1. General**

#### **1.1 *Purpose and Scope***

Applicants to the National Committee on Accreditation (“NCA”) are individuals who seek to practice law in a Common Law Jurisdiction in Canada but were not trained in an Approved Canadian Common Law Program. This Assessment Policy outlines the criteria and processes for assessing the Qualifications of these Applicants for the purposes of granting a Certificate of Qualification. A Certificate of Qualification permits an Applicant to apply to a Regulatory Authority for entry into the bar admission process in a Common Law Jurisdiction in Canada. A Certificate of Qualification does not entitle an individual to practice law.

#### **1.2 *Application***

This Policy applies to individuals who obtained their legal education from an institution(s) outside of Canada or from a Canadian Civil Law program. It does not apply to graduates of Canadian Common Law Programs (LL.B. or J.D.) approved by the Federation of Law Societies of Canada (“Federation”). It also does not apply to individuals seeking to practice law (common law or civil law) in the province of Quebec. Individuals should contact the Barreau du Quebec for more information on admission to the bar and practicing law in Quebec.

#### **1.3 *Definitions***

In this Policy, unless the context requires otherwise:

“**Additional Legal Studies**” means Courses successfully completed by an Applicant in an Approved Law Program or Approved Canadian Common Law Program, and also includes substantive examinations and Courses successfully completed as part of a licensure process in a Common Law Jurisdiction for which completion of a Qualifying Law Degree is a prerequisite.

“**Additional Legal Subject**” means a subject listed in subsection 6.3.

“**Advanced Standing**” means credit given for a Course completed in one program so that the same Course need not be completed in another program.

“**Applicant**” means a person who has applied to the NCA for an assessment of their Qualifications in accordance with this Policy.

“**Approved Canadian Common Law Program**” means a Canadian common law program approved by the Federation.

“**Approved Law Program**” means a university-level law Program, other than an Approved Canadian Common Law Program, approved, recognized, or accredited by the Regulatory Authority, or its delegate, in the Relevant Jurisdiction that if successfully completed would qualify the Applicant to apply for a license to practice law in that jurisdiction.



**“Assessment Decision”** means the decision issued to an Applicant outlining the requirements the Applicant must complete to qualify for a Certificate of Qualification.

**“Assessment Reconsideration”** means a reconsideration of an Assessment Decision under section 15.

**“Assessment Review”** means a review of an Assessment Decision under section 14.

**“Certificate of Qualification”** or **“CQ”** means the certificate issued to an Applicant who has demonstrated, in accordance with this Policy, and to the Executive Director’s satisfaction, that they possess the legal knowledge, understanding and skills set out in the National Requirement.

**“Certified Translator”** means an individual certified to translate documents who is a member in good standing of their provincial or territorial organization in Canada authorized to certify translators.

**“Common Law Jurisdiction”** means a jurisdiction with a common law legal tradition, as determined by the Executive Director at their sole discretion.

**“Core Subject”** means a subject listed in subsection 5.2.

**“Course”** means a unit of study that includes a final evaluation of student performance that is recorded on an official transcript.

**“Distance Learning”** means instruction that occurs through non-face-to-face interaction between the instructor (teacher or professor) and students using asynchronous media and tools, such as recorded video, email or conventional mail.

**“Executive Director”** means the individual designated from time to time by the Federation to oversee the application of this Policy.

**“In-person Instruction”** means instruction that occurs through synchronous, face-to-face interaction conducted with the instructor (teacher or professor) and students in the same physical location (e.g. classroom).

**“Interactive Online Instruction”** means instruction that uses online media and tools (e.g. videoconferencing, live chat) that provide opportunities for direct, synchronous interaction between instructors and students.

**“Issuing Institution”** means the institution or organization that issued the pre-law degree, law degree or license under assessment.

**“Local Learning Centre”** means an institution of learning or instruction that does not grant a Qualified Law Degree and is located in a jurisdiction or geographic location other than that of the Approved Law Program granting the law degree.

**“Misconduct Finding”** means a finding of misconduct in the context of the NCA process including, but not limited to, submitting falsified application documents, falsifying NCA documents or NCA examination misconduct, pursuant to subsections 12.6, 13.5 and 16.4.

**“Mixed Law Jurisdiction”** means a jurisdiction with a mixed common law and civil law legal tradition or with a legal tradition that has substantial common law content, as determined by the Executive Director at their sole discretion.



**“National Requirement”** means the national standard approved by the Federation that all graduates of Canadian Common Law Programs and all Applicants must meet prior to entering a law society bar admission process. This standard specifies the knowledge and skills required of graduates and Applicants, as well as the learning resources law schools must have in place.

**“Non-Common Law Jurisdiction”** means a jurisdiction that does not substantially include the common law in its legal tradition, as determined by the Executive Director at their sole discretion.

**“Official Document”** means a document sent directly from an Issuing Institution that bears the proper seals and signatures.

**“Original Document”** means a document that may be sent by the Applicant but bears the proper seals and signatures of the Issuing Institution and is not a facsimile, photocopy, or a notarized or certified copy.

**“Professional Legal Experience”** means experience practicing as a licensed lawyer, barrister, or solicitor in a Common Law Jurisdiction or teaching in an Approved Law Program.

**“Program”** means the complete set and sequence of Courses, combinations of Courses and/or other units of study, research and practice prescribed by an institution for the fulfillment of the requirements of a degree.

**“Qualifications”** includes an Applicant’s legal education, licensure, bar admission certification and/or Professional Legal Experience.

**“Qualifying Law Degree”** means a first law degree, typically (but not exclusively) an LL.B., J.D., B.C.L., or LL.L. that has been completed through an Approved Law Program.

**“Refugee Applicant”** means an Applicant who has applied for refugee status in Canada or has otherwise been recognized by the Government of Canada as a refugee, or who is a displaced person or a person in a refugee-like situation.

**“Regulatory Authority”** means an authority that is authorized to regulate entry into the legal profession in the Relevant Jurisdiction, as determined by the Executive Director at their sole discretion.

**“Relevant Jurisdiction”** means the geographic location in which the Approved Law Program is located.

## **2. Eligibility to Apply**

To be eligible to apply to the NCA an Applicant must have a Qualifying Law Degree. For the purposes of this Policy, a graduate-level law degree, such as a master’s degree (LL.M.), that was obtained following a non-law university-level degree (e.g., B.A., B.Sc.), will not qualify unless the graduate-level degree is a Qualifying Law Degree in the Relevant Jurisdiction.



### **3. Assessment Criteria**

#### **3.1 General**

Each application is evaluated on an individual basis. To be eligible for a Certificate of Qualification, an Applicant must demonstrate that they have acquired the competencies and skills equivalent to those required of graduates of Approved Canadian Common Law Programs, as set out in the National Requirement.

#### **3.2 Assessment Criteria**

The following criteria will be used in the Assessment of an Applicant's Qualifications:

- Pre-Law Education
- Legal Education
  - Academic Program completed
  - Substantive legal knowledge requirements
  - Length of academic Program
  - Mode of study
  - Academic performance
  - Currency of Qualifications
- Skills Competencies
  - Problem solving
  - Legal research
  - Oral and written communications
- Language Proficiency in English or French
- Consideration of a previous Misconduct Finding

### **4. Pre-Law Education**

#### **4.1 Length of Study**

An Applicant must demonstrate that they have successfully completed a minimum of two (2) years of full time (or equivalent) post-secondary education in a university-level Program recognized by the post-secondary educational authority in the Relevant Jurisdiction prior to attending law school. An Applicant who does not meet this requirement will be assigned Additional Legal Subjects, which must be successfully completed along with any other requirements set out in the Assessment Decision, to compensate for this deficiency (see subsection 6.3).

#### **4.2 Waiver of Requirement**

The Executive Director has sole discretion to waive this requirement when the Applicant:

- a. possesses a law degree from a Program longer than three (3) years in duration (e.g., an integrated B.A./LL.B. that is four (4) or more years in length or its equivalent);
- b. has, subsequent to obtaining a law degree, successfully completed additional post-secondary education in a university-level Program recognized by the post-secondary educational authority in the Relevant Jurisdiction, including baccalaureate or graduate-level studies in any field (e.g., B.A., B.Sc., LL.M., M.B.A.);



- c. has, subsequent to obtaining a law degree, successfully completed a bar admission Course or other legal education Program required for licensure as a lawyer, barrister or solicitor; or
- d. has a minimum of five (5) years of Professional Legal Experience as defined in subsection 1.3.

## **5. Legal Education**

### **5.1 Academic Program Completed**

As per section 2 above, to be considered for assessment, an Applicant must have a Qualifying Law Degree.

#### ***5.1.1 Advanced Standing***

An Applicant who transferred to a different educational institution part-way through their law Program and was given Advanced Standing for Courses completed in their previous Program will have those Courses recognized only if both Programs are Approved Law Programs. Courses that were not part of an Approved Law Program will not be assessed.

#### ***5.1.2 Study at Local Learning Centres***

Some Approved Law Programs provide the option for students to obtain a law degree by receiving instruction through a Local Learning Centre. Instruction received through a Local Learning Centre will be assessed as Distance Learning under section 7 (see subsection 7.3.1).

#### ***5.1.3 Exception for Licensure***

When an Applicant whose law degree is not a Qualifying Law Degree has obtained licensure from a Regulatory Authority through successful completion of substantive examination(s) and/or courses, the Executive Director may, at their sole discretion, determine whether the licensing process is sufficiently comprehensive to compensate for the Applicant not having a Qualifying Law Degree. However, in such circumstances, none of the Core Subjects completed during the Applicant's legal education will be accepted.

### **5.2 Substantive Legal Knowledge Requirements**

An Applicant is required to demonstrate competence in eight (8) substantive common law knowledge areas known as Core Subjects. These are the same subjects required of all graduates of an Approved Canadian Common Law Program.

The eight (8) Core Subjects are:

1. Canadian Administrative Law
2. Canadian Constitutional Law
3. Canadian Criminal Law
4. Canadian Professional Responsibility
5. Foundations of Canadian Law
6. Contracts
7. Property
8. Torts



An Applicant may demonstrate competence in the five (5) Core Subjects with Canadian-specific content (Canadian Administrative Law, Canadian Constitutional Law, Canadian Criminal Law, Canadian Professional Responsibility, and Foundations of Canadian Law) through successful completion of NCA examinations (see section 16), successful completion of Courses in an Approved Canadian Common Law Program (see section 19), or as set out in this section. Courses in these Canadian-specific Core Subjects taken through Programs that are not Approved Canadian Common Law Programs will not be considered except as set out in subsection 5.2.3.2.

An Applicant may demonstrate competence in the three (3) Core Subjects of Contracts, Property and Torts through successful completion of NCA examinations (see section 16), successful completion of Courses taken in an Approved Canadian Common Law Program (see section 19), or as set out below based on the jurisdiction of the Applicant's legal education or licensure.

#### ***5.2.1 Applications from Common Law Jurisdictions***

An Applicant may demonstrate competence in Contracts, Torts and Property by successfully completing Courses in those subjects as part of a law degree obtained from an Approved Law Program or licensing process in a Common Law Jurisdiction (see the NCA website), subject to the mode of study/interactive learning and legal academic performance requirements outlined in sections 7 and 8, respectively.

#### ***5.2.2 Applications from Mixed Law Jurisdictions***

An Applicant from a Mixed Law Jurisdiction (see the NCA website) will be assessed on the basis of the common law content of their Qualifications. In addition to being required to demonstrate competence in the eight (8) Core Subjects, such an Applicant may be required to demonstrate competence in Additional Legal Subjects if the Executive Director determines, at their sole discretion, that the Applicant has had insufficient exposure to the common law. In assessing exposure to the common law, the Executive Director will consider the same criteria outlined under subsection 5.2.4

#### ***5.2.3 Applications from Canadian Civil Law Graduates***

The NCA recognizes the significant Canadian common law component of the legal education of Applicants with a Qualifying Law Degree from a civil law Program at a Canadian law school. Although there are significant differences between the common law (used everywhere in Canada other than Quebec) and the civil law (used in Quebec), all public law in Quebec is based on the common law system.

##### ***5.2.3.1 Applicants Licensed by the Barreau du Quebec***

Consistent with the provisions of the National Mobility Agreement 2013, which recognizes the significant overlap in the training in Canadian common law and Canadian civil law Programs, an Applicant with a Qualifying Law Degree from a Program at a Canadian law school who holds a licence from the Barreau du Quebec will automatically receive a Certificate of Qualification upon review of their completed application.





### **5.2.3.2 Unlicensed Canadian Civil Law Graduates**

Notwithstanding 5.2 above, an Applicant with a Qualifying Law Degree from a Canadian civil law Program who does not hold a licence from the Barreau du Quebec may demonstrate competence in the Canadian-specific Core Subjects through successful completion of those subjects as part of their Program. Such Applicants will be required to demonstrate competence in the following subjects, unless they have been successfully completed in an Approved Law Program in a Common Law Jurisdiction:

- Contracts;
- Torts;
- Property; and
- Canadian Professional Responsibility (*if not successfully completed during the Applicant's Canadian civil law education*).

### **5.2.4 Applications from Non-Common Law Jurisdictions**

Graduates of non-common law degree Programs (e.g., civil law, customary law) outside of Canada will not receive recognition for their legal education unless they have sufficient exposure to the common law in accordance with this Policy. Sufficient exposure to the common law may be obtained through:

1. A common law degree (i.e., LL.B., B.C.L., J.D., Course-based LL.M.). An LL.M. with a focus in international law will not normally provide sufficient exposure to the common law, even if it was completed in a Common Law Jurisdiction. However, the Executive Director will review all transcripts that are Original Documents and has sole discretion to determine if some of the Courses completed can satisfy requirements to proceed in the NCA assessment process. Doctorate degrees (i.e., Ph.D.) will not normally be considered.
2. Licensure as a lawyer, barrister, or solicitor in a Common Law Jurisdiction through the successful completion of substantive Course work and/or examinations. The Executive Director has sole discretion to determine whether the Course work and/or examinations are sufficiently comprehensive for the Applicant to proceed in the NCA assessment process.
3. Certification as a paralegal or notary in a Common Law Jurisdiction. The Executive Director has sole discretion to determine whether the paralegal or notary certification process is sufficiently comprehensive for the Applicant to proceed in the NCA assessment process.

Exposure to the common law in the above-mentioned ways is considered strictly for the purposes of enabling non-common law graduates to proceed in the NCA assessment process. An Applicant with sufficient exposure to the common law, as determined by the Executive Director in accordance with this Policy, will be required to demonstrate competence in all eight (8) Core Subjects through the successful completion of NCA examinations or Courses in an Approved Canadian Common Law Program, plus any Additional Legal Subjects deemed necessary in light of their Qualifications (see subsection 6.3).





## **6. Length of Law Program**

### **6.1 General**

An Applicant is required to have completed three (3) years (or the equivalent number of Course credits) in a law Program. This is consistent with the requirement for Approved Canadian Common Law Programs.

### **6.2 When Requirement is Not Met**

If an Applicant completed a law degree that is less than three (3) years in length, they will be required to demonstrate competency in at least one (1) of the following ways:

1. Completion of Additional Legal Subjects through successful completion of NCA examinations (see section 16) or Courses or a Program (J.D., LL.B., LL.M., bar admissions) deemed acceptable at the sole discretion of the Executive Director, such as:
  - a. An Approved Canadian Common Law Program;
  - b. An Approved Law Program; or
  - c. A mixed law or non-common law Program.
2. At least five (5) years of Professional Legal Experience as defined under subsection 1.3.

### **6.3 Additional Legal Subjects**

When Additional Legal Subjects must be assigned, they will be selected from the following list:

- a. Business Organizations
- b. Civil Procedure
- c. Commercial Law
- d. Evidence
- e. Family Law
- f. Remedies

The number of Additional Legal Subjects assigned will depend on the length of the law Program completed by an Applicant.

In most cases, the Assessment Decision will provide an Applicant with options for which subject(s) they may complete. However, an Applicant will not be assigned subjects that they successfully completed during their legal education.



## **7. Mode of Study**

### **7.1 Assessing the Mode of Study**

The NCA recognizes that the practice of law is an interpersonal endeavour. Problems are solved through interactions with other individuals, requiring an understanding of how to effectively communicate with people in person. This section outlines how the NCA assesses the mode of study for Courses delivered along a spectrum of interaction from In-person Instruction, to Interactive Online Instruction as described in subsection 7.2, to Distance Learning as described in subsection 7.3.

### **7.2 Interactive Learning Requirement**

The National Requirement requires that two-thirds (or two (2) out of three (3) years) of an Applicant's law degree must have been obtained through In-person Instruction or instruction involving direct interaction between instructor and students in an Approved Law Program.

To be recognized as meeting this interactive learning requirement, a Course that is not wholly delivered through In-person Instruction must meet the following criteria:

- I. Courses using Interactive Online Instruction must be part of a Program that consists of no less than one (1) year of In-person Instruction as defined in this Policy.
- II. Courses using Interactive Online Instruction must provide opportunities for students to develop legal problem solving and legal communications skills and include no fewer than six (6) of the following eight (8) components:
  - a. reliable access for instructor and students to all media and applications used in the delivery of the Course;
  - b. a synchronous element providing direct interaction between instructor and students that accounts for no less than 1/3 of the scheduled course hours;
  - c. mechanisms to ensure students satisfy the 1/3 requirement;
  - d. mechanisms to provide formative feedback to students;
  - e. mechanisms to assess student progress, which may include assignments, in-class presentations, or in-class participation;
  - f. methods to assist students in developing oral communications skills, including in-class participation, presentations or participation in discussion-groups;
  - g. methods of assessment that:
    - i. are developed by the instructor;
    - ii. are monitored by the instructor or their delegate;
    - iii. ensure students satisfy the relevant elements of the National Requirement;
    - iv. provide some guarantee against academic misconduct; and
    - v. are assessed by the instructor.
  - h. ready access for students to on-line legal resources including:
    - i. case law for the relevant jurisdiction;
    - ii. legislation for the relevant jurisdiction;
    - iii. research tools including digests, loose-leaf services or forms;
    - iv. treatises for the relevant jurisdiction; and
    - v. leading journals for Core Subjects.



The Executive Director will take all evidence obtained directly from the Issuing Institution into consideration to determine whether the interactive learning requirement has been satisfied. In particular, in assessing whether an Interactive Online Instruction Course complies with this Policy, the Executive Director will consider:

- a. the total Course hours;
- b. the number of hours of synchronous contact and the nature of that contact;
- c. the nature and extent of all direct contact between the instructor and students;
- d. the number and nature of assessments and whether they are of a type that permits the instructor to determine whether a student satisfies the relevant elements of the National Requirement;
- e. whether students have online access to core legal materials; and
- f. whether the Course is part of a Program that consists of no less than one (1) year of In-person Instruction.

### **7.3 Distance Learning**

An Applicant who holds a law degree from a Distance Learning Program or any Program that does not meet the interactive learning requirement under subsection 7.2, must successfully complete two (2) years of in-person instruction in a law Program acceptable to the NCA, in addition to any other requirements identified by the Executive Director. The two-year requirement will be reduced to one (1) year In-person for Applicants holding a law degree from a program providing two (2) years of Interactive Online Instruction that meets the requirements set out in subsection 7.2. The two-year requirement may also be reduced at the sole discretion of the Executive Director if an Applicant has received some In-person Instruction or instruction involving direct interaction between instructor and students (as per the National Requirement) in an Approved Law Program.

#### ***7.3.1 Instruction Obtained at a Local Learning Centre***

Any In-person Instruction or Interactive Online Instruction obtained at a Local Learning Centre, as described under subsection 1.3, will not count toward meeting the interactive learning requirement under subsection 7.2 and will not be recognized by the Executive Director in considering a reduction of the two-year requirement under subsection 7.3.

#### ***7.3.2 NCA Examinations Alternative to Courses***

Where an Applicant whose Assessment Decision requires them to successfully complete two (2) years in a law Program acceptable to the NCA, is not able to access Courses to complete the Core Subjects in subsection 5.2, the Executive Director may, at their sole discretion, assign NCA examinations as an alternative when satisfied that the Applicant has completed additional legal studies that meet the interactive learning requirement.



## **7.4 Additional Legal Studies to Satisfy Requirement**

Additional Legal Studies completed as part of an Approved Canadian Common Law Program or Approved Law Program or other law school offering acceptable to the NCA at the Executive Director's sole discretion, and delivered through In-person Instruction or Interactive Online Instruction that meets the criteria under paragraphs 7.2(I) and (II) will count towards satisfying the interactive learning requirement.

### **7.4.1 One-year Programs**

Additional Legal Studies completed as part of a one (1) year Program (e.g., LL.M) acceptable to the NCA at the Executive Director's sole discretion, must consist of no less than fifty percent (50%) In-person Instruction with the remainder delivered through Interactive Online Instruction that meets the criteria outlined under paragraph 7.2(II).

## **8. Legal Academic Performance**

### **8.1 General**

Academic performance is an indicator of an Applicant's command of the legal concepts covered during their legal education. An Applicant's overall academic performance during their law degree (e.g., passing grade or average) and their academic performance in individual Core Subjects will be assessed. An Applicant must first demonstrate acceptable overall legal academic performance before academic performance in individual Core Subjects will be assessed.

### **8.2 Overall Legal Academic Performance**

To be considered acceptable, an Applicant's overall legal academic performance must qualify them for admission to the bar in the Relevant Jurisdiction. An Applicant with unacceptable overall legal academic performance will not receive any recognition for that degree. By way of examples, Third Class or Pass degrees under the British system of legal education and a GPA of less than 1.0 in Australia and the United States, do not qualify as acceptable academic performance.

#### **8.2.1 Remediating Unacceptable Legal Academic Performance**

Unacceptable overall legal academic performance may be remedied through successful completion of Additional Legal Studies. When Additional Legal Studies have been successfully completed, the Applicant will be assessed, but will receive no credit for any of the Courses taken during the first law degree. Any Core Subject(s) completed during Additional Legal Studies will, however, be considered.

### **8.3 Academic Performance in Core Subjects**

An Applicant must demonstrate acceptable legal academic performance by completing Courses in Contracts, Torts and Property through an Approved Law Program. A failing grade or a grade less than five percent (5%) or 5 marks, whichever is higher, above the passing grade at the institution of study in any of these Courses constitutes unacceptable legal academic performance. For example, if the institution's passing grade is 50%, the Applicant must have received a grade of at least 55% in each of these Courses.

#### **8.3.1 Remediating Unacceptable Performance in Core Subjects**

Unacceptable legal academic performance in a Core Subject may only be remedied through successful completion of the subject through NCA examinations or Additional Legal Studies.



## **9. Currency of Legal Qualifications**

### **9.1 Currency**

An Applicant's Qualifications must be current at the time their file was ready for assessment. For an Applicant's Qualifications to be considered current, in three (3) of the past five (5) years they must have been attending a Qualifying Law Degree Program, pursuing additional legal studies and acquiring legal experience, satisfactory to the Executive Director, at their sole discretion, or engaged in some combination of legal studies and legal experience. If an Applicant's Qualifications are not current at the time their file was ready for assessment, the Qualifications will be considered "stale" and the Applicant will be assigned Core Subjects and/or Additional Legal Subjects in accordance with subsection 9.2.

### **9.2 Assignment of Additional Subjects**

One of Contracts, Torts, and Property will be assigned for each five (5) year period that the Applicant does not have current Qualifications, up to fifteen (15) years. If some, or all, of these subjects have already been assigned, Additional Legal Subjects will be assigned from the list in subsection 6.3. If more than fifteen (15) years have passed, the Applicant will be required to complete a minimum of four (4) subjects, with the final number determined at the sole discretion of the Executive Director. When more than ten (10) subjects in total have been assigned, the Executive Director will require the Applicant to complete them, or acceptable alternatives, through In-person instruction at an Approved Canadian Common Law Program or Approved Law Program.

## **10. Other Competencies**

### **10.1 Demonstrating Other Competencies**

An Applicant must demonstrate competence in problem solving, legal research, and oral and written communications in accordance with the National Requirement.

### **10.2 Problem Solving**

To demonstrate competence in problem solving, an Applicant must be able to:

- a. identify relevant facts;
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- c. analyze the results of research;
- d. apply the law to the facts; and
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

#### ***10.2.1 Satisfying Problem Solving Requirement***

Successful completion of the requirements assigned in an Applicant's Assessment Decision satisfies the problem solving requirement.



### **10.3 Legal Research**

To demonstrate competence in legal research an Applicant must be able to:

- a. identify legal issues;
- b. select sources and methods and conduct legal research relevant to Canadian Law;
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- d. identify, interpret and apply results of research; and
- e. effectively communicate the results of research.

#### ***10.3.1 Satisfying Legal Research Requirement***

An Applicant must satisfy this requirement by completing a Course in legal research and writing offered by an Approved Canadian Common Law Program or through the NCA legal research and writing module with the Canadian Centre for Professional Legal Education (CPLED).

#### ***10.3.2 Coming into Force***

Subsection 10.3.1 will apply to applications assessed on or after January 1, 2022. In the case of applications assessed prior to that date, an Applicant will be deemed to have satisfied the legal research requirement in subsection 10.3 if they have successfully completed their legal education and NCA assigned subjects.

### **10.4 Oral and Written Communications**

To demonstrate competence in oral and written communications in English or French, an Applicant must be able to:

- a. identify the purpose of the proposed communication;
- b. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- c. effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.

#### ***10.4.1 Satisfying Oral and Written Communications Requirement***

Successful completion of the requirements assigned in an Applicant's Assessment Decision satisfies the oral and written communications requirement.

## **11. Language Proficiency Requirement**

### **11.1 Language Requirement**

All Applicants are required to demonstrate proficiency in communicating in at least one (1) of Canada's two (2) official languages, English and French. An Applicant will be considered to have demonstrated the required proficiency in English or French if:

- a. the language of instruction of the Applicant's Qualifying Law Degree was English or French; and
- b. the Qualifying Law Degree was obtained in a country where English or French is an official language.



## **11.2 When Language Requirement is Not Met**

An Applicant who does not meet the language requirement under subsection 11.1 must provide evidence of successful completion within two (2) years of their file being ready for assessment of:

- a. a test accepted by Immigration, Refugees and Citizenship Canada as proof of English language proficiency with a minimum score set by the NCA at the sole discretion of the Executive Director in each of the following elements: writing, speaking, reading and listening; or
- b. a test accepted by Immigration, Refugees and Citizenship Canada or Immigration Quebec as proof of French language proficiency, with a minimum score set by the NCA at the sole discretion of the Executive Director in each of the following elements: writing, speaking, reading and listening.

### ***11.2.1 Language Test Documentation***

The Applicant must arrange for all documentation showing proof of the completion of language tests and scores attained to be sent directly from the testing administrator to the NCA.

## **12. Application Process**

### **12.1 How to Apply**

An Applicant must complete an online application using the NCA web-based platform at this [link](#). Once completed, an Applicant will be assigned a file number and a password that will enable them to access their candidate profile to track and monitor the status of their application.

### **12.2 Documentation Required**

For the NCA to assess an Applicant's Qualifications, the Applicant must pay the application fee specified by the NCA and submit the following required documentation:

- the online assessment application form;
- all Original Documents for Courses completed during their pre-law university-level education (where applicable) (see subsection 12.3.1);
- all Official Documents related to Courses completed in an Approved Canadian Common Law Program or an Approved Law Program, and Courses or examinations completed in a licensing process (see subsection 12.3.2);
- if currently or formerly licensed, documentation related to the Applicant's standing with the bar in the Relevant Jurisdiction;
- an updated curriculum vitae outlining their Qualifications; and
- any additional documentation that the NCA considers necessary to assess an Applicant's Qualifications.

### **12.3 Methods for Submitting Documents**

The Applicant is responsible for arranging for the submission of all the required documentation listed in subsection 12.2 to the NCA by the method(s) specified in this Policy. Should an Applicant have any questions about submitting documents, they should communicate directly with the NCA.





### **12.3.1 Submitting Pre-law Documents**

While the NCA prefers to receive transcripts for pre-law university-level studies directly from the Issuing Institution, an Applicant may submit these Original Documents to the NCA.

### **12.3.2 Submitting Law School and Licensing Documents (Official Documents)**

Official Documents, including law school transcripts and all licensing-related documents, **must** be sent directly from the Issuing Institution(s) to the NCA by post, courier or through a secure online document sharing system. It is the responsibility of the Applicant to contact the Issuing Institution(s) to make the necessary arrangements for submitting these documents. The NCA will not accept these documents if they are submitted by the Applicant.

## **12.4 Refugee Applicants**

While Refugee Applicants are encouraged to submit the required documentation in accordance with subsections 12.2 and 12.3, the NCA will work with each Applicant to determine suitable alternative arrangements and documentation if they are unable to obtain Original Documents or arrange for documents to be submitted directly from Issuing Institutions to the NCA. In such cases, Refugee Applicants will be required to present evidence of refugee or similar status, along with any other documentation the NCA determines is needed for an assessment. The NCA will take all reasonable steps to proceed with the assessment if a Refugee Applicant is unable to provide required documents.

## **12.5 Privacy**

For security and privacy reasons, the NCA cannot provide any information relating to an Applicant's file to family members or friends who may be inquiring on an Applicant's behalf, unless the Applicant authorizes the release of the information in writing.

## **12.6 Falsified Application Documents**

Submission of falsified application documents by the Applicant, or by a third party on the Applicant's behalf, will result in one or more consequences that the NCA deems appropriate which may include, but are not limited to:

- a. rejection of the application;
- b. forfeiture of any fees paid;
- c. cancellation of any existing Assessment Decision in relation to the Applicant and invalidation of any requirements already met;
- d. preparation of a written report on the conduct of the Applicant to be shared with Canadian law societies and the Regulatory Authority;
- e. notation of misconduct to the Applicant's file for consideration regarding eligibility for a future application;
- f. notation of misconduct on any Certificate of Qualification issued to the Applicant;
- g. suspension or permanent expulsion from the NCA process;
- h. initiation of legal proceedings by the NCA against the Applicant for damages;
- i. pursuit by the NCA of any other legal remedies available to it; and
- j. such additional consequences as the NCA may deem appropriate.



## **12.7 Translation of Documentation**

Any required documents listed in subsection 12.2 that are in a language other than English or French must be translated into English or French. An Applicant must submit the Original Document accompanied by the translation. For the NCA to accept the translation, the following conditions must be met:

- a. the translation must be of the Original Document; and
- b. the translation must be:
  - i. performed and certified by a Certified Translator; or
  - ii. performed by a non-certified translator and accompanied by an affidavit of the translator indicating their qualifications as a translator and confirming the translation is of the Original Document. The Executive Director has sole discretion to determine whether the translator's qualifications or the translation are sufficient. The Executive Director has sole discretion to obtain an external opinion on the translator's qualifications.

Documents that are already in English or French do not have to be translated, even if an Applicant's application is in the other official language. For example, an application completed in French may be accompanied by documents in English.

## **13. Assessment Process**

### **13.1 General**

An Applicant's Qualifications will be assessed by the NCA in accordance with this Policy, and any other NCA policies in force at the time of the assessment, after all required fees have been paid and all required documents as specified in section 12.2 have been received by the NCA.

### **13.2 Previous Policies Do Not Apply**

The NCA will not apply expired, out-of-date, or superseded policies to current applications, nor will it waive requirements assigned or otherwise imposed under previous policies should the Policy change after an Assessment Decision has been issued.

### **13.3 Assessment Decision**

Following an assessment of the Applicant's file, a written Assessment Decision will be issued electronically to the Applicant. The Assessment Decision will include reasons and will specify how the Applicant can complete the assigned requirements.

### **13.4 Assessment Validity**

An Applicant's Assessment Decision will be valid for a period of five (5) years from the date it is issued.

#### ***13.4.1 Request to Extend Validity Period***

An Applicant may make a request in writing to the Executive Director to extend the validity period under subsection 13.4. The Applicant must outline the reasons for the request and explain why an extension is justified in the circumstances. The Applicant may submit the request prior to or within six (6) months after the expiration of the five (5) year validity period. The Executive Director will review the Applicant's request and has the sole discretion to decide whether to extend the validity period.



### **13.5. Falsified NCA Documents**

Falsification of any documents issued by the NCA by an Applicant, or by a third party on the Applicant's behalf, will result in one or more consequences that the NCA deems appropriate which may include, but are not limited to:

- a. cancellation of any existing Assessment Decision in relation to the Applicant and invalidation of any requirements already met;
- b. forfeiture of any fees paid;
- c. preparation of a written report on the conduct of the Applicant to be shared with Canadian law societies and the Regulatory Authority;
- d. notation of misconduct to the Applicant's file for consideration regarding eligibility for a future application;
- e. notation of misconduct on any Certificate of Qualification issued to the Applicant;
- f. forfeiture of fees paid;
- g. suspension or permanent expulsion from the NCA process;
- h. initiation of legal proceedings by the NCA against the Applicant for damages;
- i. pursuit by the NCA of any other legal remedies available to it; and
- j. such additional consequences as the NCA may deem appropriate.

## **14. Assessment Review**

### **14.1 Requests for Review**

An Applicant who has documentation or information related to their legal education, licensure, or professional experience as a lawyer, barrister or solicitor in a Common Law Jurisdiction that was not submitted as part of their application, and which the Applicant reasonably believes may alter the Assessment Decision, may request an Assessment Review.

### **14.2 Submitting a Request for Review**

A request for an Assessment Review must be made in writing to the Executive Director and must include the relevant information or documentation that was not provided in the original application. Information related to Courses completed in an Approved Canadian Common Law Program or Approved Law Program, or Courses or examinations completed in a licensing process must be sent directly from the Issuing Institution to the NCA.

### **14.3 Review by Executive Director**

The Executive Director will review the new documentation or information to determine whether it alters the Assessment Decision under review. The Executive Director will inform the Applicant in writing of the outcome of the Assessment Review and, if necessary, will issue an amended Assessment Decision to the Applicant electronically.

### **14.4 Timing for Review**

An Applicant may request an Assessment Review within four (4) weeks of receiving the Assessment Decision.

### **14.5 No Additional Fee**

No additional fees are required for an NCA Assessment Review under this section.



## **15. Assessment Reconsideration**

### **15.1 Requests for Reconsideration**

An Applicant may request an Assessment Reconsideration if, following receipt of their Assessment Decision, they completed Additional Legal Studies in a Common Law Jurisdiction that they believe may satisfy some of the requirements assigned.

### **15.2 Submitting a Request for Reconsideration**

An Applicant submitting a request for an Assessment Reconsideration must follow the process outlined in subsection 14.2.

### **15.3 Review by Executive Director**

The Executive Director will review the Additional Legal Studies completed and has sole discretion to determine whether some of the assigned requirements in the Assessment Decision may be waived. The Executive Director will inform the Applicant in writing of the outcome of the Assessment Reconsideration and, when subjects have been waived, the NCA will update the candidate profile to reflect this change.

### **15.4 Timing for Reconsideration**

An Applicant may request an Assessment Reconsideration at any time while their Assessment Decision remains valid.

### **15.5 No Additional Fee**

No additional fees are required for an Assessment Reconsideration under this section.

## **16. NCA Examinations**

### **16.1 Registration**

An Applicant may register for NCA examinations only after they have received an Assessment Decision that indicates they are eligible to do so. The NCA will post information on examination schedules, including the dates, on its website. An Applicant who chooses to satisfy Additional Legal Subject requirements through NCA examinations must successfully complete those subjects before a Certificate of Qualification will be issued.

#### ***16.1.1 Failed Examinations***

If an Applicant fails an NCA examination in an assigned subject, they must clear the failure by successfully completing the examination in that Core Subject or Additional Legal Subject, or through an NCA approved course at an Approved Law Program. They will not be permitted to pursue a different examination subject.



## **16.2 Examination Attempts**

An Applicant is permitted to write an NCA examination in a particular Core Subject or Additional Legal Subject to a maximum of three (3) times.

### **16.2.1 Request for Fourth and Final Attempt**

The Executive Director may, at their sole discretion, grant an Applicant a fourth (4th) and final attempt of the NCA examination in an assigned subject in accordance with the following criteria:

- a. the Applicant must submit a written request to the Executive Director;
- b. the written request must include a statement confirming the Applicant's understanding that the fourth (4th) attempt is the final attempt and that, if unsuccessful, the Applicant will be required to take the course in law school, pursuant to the provisions of section 19; and
- c. the Applicant must respond to any inquiries received from the Executive Director within the timeframe specified by the Executive Director.

The Executive Director will notify the Applicant in writing of the decision on the request for a fourth (4th) and final attempt.

## **16.3 Examination Validity**

NCA examinations must be successfully completed within the five (5) year validity period of the Applicant's Assessment Decision, or within the extended validity period if an extension has been granted under subsection 13.4.1.

### **16.3.1. Bringing Forward Examinations**

If the validity period of the Assessment Decision pursuant to section 13.4.1 expires, and the Applicant reapplies to the NCA, examinations successfully completed within the previous five (5) years of the new Assessment Decision will be brought forward to satisfy the requirements of the new Assessment Decision.

## **16.4. Examination Misconduct**

Dishonesty, fraud, cheating, misrepresentation, plagiarism or copying, any breach of the NCA's Online Examination Rules, or other examination misconduct will not be tolerated and will result in one or more consequences that the NCA deems appropriate which may include, but are not limited to:

- a. a written warning from the NCA;
- b. immediate termination of the examination session and invalidation of exam results;
- c. cancellation of any existing Assessment Decision in relation to the Applicant and invalidation of any requirements already met;
- d. preparation of a written report on the conduct of the Applicant to be shared with Canadian law societies and the Regulatory Authority;
- e. notation of misconduct in the Applicant's file for consideration regarding eligibility for a future application;
- f. notation of misconduct on any Certificate of Qualification issued to the Applicant;
- g. suspension or permanent expulsion from the NCA process;
- h. initiation of legal proceedings by the NCA against the Applicant for damages;
- i. pursuit by the NCA of any other legal remedies available to it; and
- j. such additional consequences as the NCA may deem appropriate.



## **17. Investigation of Misconduct**

If possible misconduct by an Applicant, in connection with the NCA process (pursuant to subsections 12.6, 13.5, 16.4 or other misconduct related to the NCA process), is reported or discovered, the Applicant will be notified and the NCA will investigate. The Applicant may provide additional information to assist with the investigation within 30 days of being notified (the calculation of time in accordance with section 23.2, Appeal Policy). The Applicant will be advised in writing of the NCA's decision, which may include a finding that no further action is required or a Misconduct Finding and the consequences, as applicable.

## **18. Appealing an Assessment or Other Decision**

An Applicant may appeal an Assessment Decision, an Assessment Review decision, an Assessment Reconsideration, or a Misconduct Finding in accordance with the NCA Appeal Policy (starting at section 23 below) in effect at the time of the appeal. An appeal of an Assessment Reconsideration will be limited to an evaluation of the new Qualifications obtained and supporting documentation and information submitted on the Assessment Reconsideration.

## **19. Law School Courses**

### **19.1 Pre-Approval for Courses Required**

An Applicant may be required by the NCA or may choose to complete law school Courses or obtain a Qualifying Law Degree through an Approved Canadian Common Law Program. Prior to registering with an Approved Canadian Common Law Program, an Applicant must obtain from the Executive Director pre-approval of any Courses to be taken to ensure they will satisfy the NCA requirements.

### **19.2 Responsibilities of the Applicant**

It is the Applicant's responsibility to research law school Courses and/or Programs and to communicate directly with the law schools that they plan to attend. Upon completion of their Course and/or Program requirements, the Applicant must ensure that Original Document transcripts are sent to the NCA directly from the Issuing Institution.

## **20. Awarding a Certificate of Qualification (CQ)**

An Applicant will receive a CQ upon successful completion of all the assigned requirements outlined in the Assessment Decision. Once a CQ is issued, the Applicant is eligible to apply for entry to the licensing process of any Regulatory Authority in the Common Law Jurisdictions in Canada.

## **21. Policy Subject to Change**

This Policy is subject to change at any time at the NCA's sole discretion without advance notice.

## **22. Coming Into Force**

This Policy comes into force effective March 31, 2023.



## **APPEAL POLICY**

### **23. General**

#### **23.1 Application**

This Appeal Policy sets out the rules and procedures that govern appeals of NCA Assessment Decisions, Assessment Review decisions, Assessment Reconsiderations, and Misconduct Findings.

#### **23.2 Calculating Time**

Time periods under this Policy are calculated by counting the specified number of days excluding the first day on which an event or activity occurs (e.g. receipt of a document or notice). The period will end at 23:59 Eastern Time (ET) on the last day of the period. All calendar days for the period are counted including Holidays, except:

- the days between December 23 and the first business day following New Years' Day are not counted; and
- if the last day of the period falls on a Holiday, the period will end on the next day that is not a Holiday.

#### **23.3 Definitions**

In this Appeal Policy, unless the context requires otherwise:

**“Appeal Panel”** means the members of the NCA assigned to hear appeals as described in section 29.

**“Appeal Deadline”** means the last date on which an Appellant may file an appeal with the NCA under subsection 26.2, or subsection 26.2.1 if an extension is granted.

**“Appeals Clerk”** means the clerk of the NCA responsible for coordinating the appeal.

**“Appellant”** means an individual filing an appeal.

**“Applicant”** has the same meaning as in subsection 1.3 of the NCA Assessment Policy.

**“Assessment Decision”** has the same meaning as in subsection 1.3 of the NCA Assessment Policy.

**“Assessment Reconsideration”** has the same meaning as in subsection 1.3 of the NCA Assessment Policy.

**“Assessment Review”** has the same meaning as in subsection 1.3 of the NCA Assessment Policy.

**“Executive Director”** has the same meaning as in subsection 1.3 of the NCA Assessment Policy.

**“Holiday”** means a Saturday, Sunday, or any other day that is a statutory holiday pursuant to Ontario legislation or as proclaimed by the Lieutenant Governor of Ontario.

**“Legal Counsel”** means a lawyer authorized to practice law in one of the Canadian provinces or territories.





“**Misconduct Finding**” has the same meaning as in subsection 1.3 of the NCA Assessment Policy,

“**NCA Decision**” means Assessment Decision, Assessment Review, Assessment Reconsideration, or Misconduct Finding.

“**Notice of Intention to Appeal**” means a notice of intention to appeal an NCA Decision under section 25 of this Policy.

“**Reply**” means an Applicant’s reply under subsection 27.3 to a Response.

“**Response**” means the Executive Director’s response to an appeal under section 27.2.

## **24. Eligibility to Appeal**

An Applicant who receives an NCA Decision that they believe incorrectly applies the terms of the NCA Assessment Policy, they may appeal that NCA Decision in accordance with this Policy. (See Appendix A for a diagram of the review and appeal processes).

## **25. Notice of Intention to Appeal**

### **25.1 Notice of Intention to Appeal**

An Applicant who intends to appeal an NCA Decision must submit a Notice of Intention to Appeal to the Appeals Clerk by email **within thirty (30) days** of the date that the NCA Decision was issued.

#### ***25.1.1 Delivery to the Executive Director***

The Appeals Clerk must email a copy of the Applicant’s Notice of Intention to Appeal to the Executive Director.

### **25.2 Review by Executive Director**

The Executive Director must complete a review of the NCA Decision **within fourteen (14) days** of receipt of the Notice of Intention to Appeal. The purpose of the review is to consider whether providing more information to the Applicant, as described in subsection 25.2.1, could resolve the issues raised in the Notice of Intent to Appeal.

#### ***25.2.1 Explanation Prior to Appeal***

During the Executive Director’s review, the Executive Director may, at their sole discretion, contact the Applicant to further explain the NCA Decision and NCA policies, discuss the outcome of similar appeals, and provide any other relevant information.

### **25.3 Confirmation of Appeal**

Following the Executive Director’s review under subsection 25.2, the Appeals Clerk must notify the Applicant of the outcome of the review and request confirmation of the Applicant’s intention to proceed with the appeal, outlining the process for filing an appeal and the applicable Appeal Deadline. If the Applicant intends to proceed with the appeal, the Applicant must provide confirmation by email to the Appeals Clerk **within fourteen (14) days** of the receipt of the Appeals Clerk’s request.



## **25.4 No Additional Fees**

There are no fees for submitting a Notice of Intention to Appeal under subsection 25.1 or confirmation under subsection 25.3.

## **26. How to Appeal**

### **26.1 General**

The Appellant must file the appeal materials outlined in subsection 26.3 and pay the appeal fee specified in subsection 26.4 through the NCA candidate portal. Any questions about filing an appeal or appeal materials should be sent by email to the Appeals Clerk.

### **26.2 Deadline for Filing Appeal**

Subject to subsection 26.2.1, an appeal must be filed **within forty-five (45) days** from the date the Appellant notifies the NCA by email of their intention to proceed with the appeal. The Appellant must file all the materials outlined in subsection 26.3 and pay the appeal fee specified in subsection 26.4 with the appeal.

#### ***26.2.1 Extension of Time for Filing Appeal***

An Appellant may apply for an extension of the time to file an appeal if their failure to meet the deadline is due to circumstances beyond their reasonable control that could not reasonably have been foreseen or provided against. An Appellant must seek an extension in a timely fashion in advance of the expiration of the appeal deadline in subsection 26.2. A request for an extension must be made by email to the Appeals Clerk. The decision to grant the extension will be at the sole discretion of the Chair of the NCA. The Appeals Clerk will notify the Appellant by email of the Chair's decision, including the new Appeal Deadline if the extension is being granted.

### **26.3 Required Appeal Materials**

The Appellant's appeal materials must be in writing and must not exceed twenty (20) pages, excluding exhibits. The appeal materials must contain:

- the grounds for the appeal; and
- submissions in support of the Appellant's appeal.

### **26.4 Payment Required**

An Appellant must pay the appeal fee specified on the NCA website.

### **26.5 Format for Filing Appeal Materials**

All appeal materials must be filed in a single electronic document in PDF format.

### **26.6 Withdrawal**

An Appellant may withdraw an appeal or Notice of Intention to Appeal under section 25 at any time by notifying the Executive Director and Appeals Clerk by email.



## **26.7 Representation by Legal Counsel**

An Appellant has the right to be represented by Legal Counsel on an appeal. The Appellant is responsible for all costs associated with retaining their own Legal Counsel regardless of the outcome of the appeal.

The Executive Director may be represented on the appeal by Legal Counsel.

## **27. Executive Director's Review and Response**

### **27.1 Materials to the Executive Director**

**Within seven (7) days** of the filing of the appeal under section 26, the Appeals Clerk must email the Executive Director a copy of the Appellant's appeal materials for review and notify the Executive Director of the deadline for submitting a Response.

### **27.2 Executive Director's Response**

**Within twenty-one (21) days** of receipt of the appeal materials from the Appeals Clerk, the Executive Director must submit to the Appeals Clerk by email a Response to the appeal by email. The Response must not exceed twenty (20) pages, excluding exhibits.

#### ***27.2.1 Response Sent to the Appellant***

**Within seven (7) days** of receipt of the Response, the Appeals Clerk must provide a copy of the Response to the Appellant by email and notify the Appellant of the deadline for submitting a reply.

### **27.3 Appellant's Reply**

**Within fourteen (14) days** of receipt of the Response, the Appellant may provide a Reply to the Appeals Clerk by email. A Reply must not exceed five (5) pages, excluding exhibits. The Reply shall not advance new grounds or new arguments for the appeal. Any new grounds or arguments contained in the Reply, as determined by the Chair of the NCA, at their sole discretion, will be disregarded in the determination of the Appeal.

#### ***27.3.1 Reply Sent to the Executive Director***

**Within seven (7) days** of receipt of the Reply, the Appeals Clerk must provide a copy of the Reply to the Executive Director by email.

### **27.4 Request for Extension**

The Executive Director or the Appellant may apply for an extension to the time allowed for the Response or a Reply, respectively, by submitting a request to the Appeals Clerk by email if their failure to meet the deadline is due to circumstances beyond their reasonable control that could not reasonably have been foreseen or provided against. A request for extension must be made in a timely fashion in advance of the relevant deadline expiring. Any extension will be granted at the sole discretion of the Chair of the NCA.



## **28. Appeal Hearing Date and Materials to the Appeal Panel**

### **28.1 Scheduled Appeal Hearing Date**

The Appeals Clerk must notify the Appellant and the Executive Director by email of the hearing date for the appeal **within seven (7) days** of the earlier of:

- the receipt of the Reply by the Appeals Clerk; or
- the expiry of the time allowed for the Appellant to provide a Reply, including any extension granted under subsection 27.4.

### **28.2 Adjournments**

The Appeal Panel must grant a request for an adjournment of a scheduled appeal hearing in exceptional circumstances only. The decision on whether there are exceptional circumstances that justify granting an adjournment is within the sole discretion of the Appeal Panel. Where the Appeal Panel grants a request for an adjournment, the panel may set such terms as it deems appropriate.

### **28.3 Materials to the Appeal Panel**

**At least fourteen (14) days** prior to the date of the appeal hearing, the Appeals Clerk must send to the Appeal Panel by email all filed appeal submissions and exhibits, including the Response and the Reply, if any.

## **29. The Appeal Panel**

### **29.1 Composition**

The Appeal Panel must be composed of three (3) members of the NCA, as designated by the Chair of the NCA.

### **29.2 Role of the Appeal Panel**

The role of the Appeal Panel is to determine whether the NCA Decision is in accordance with the NCA Assessment Policy.

### **29.3 Legal Consultation**

The Appeal Panel may consult its own Legal Counsel at any stage of the appeal.

### **29.4 Procedural Requirements and Waiver**

The Appeal Panel may, with the parties' consent, waive any procedural requirements of this Policy where it is of the opinion that it would be appropriate to do so in the circumstances.



## **30. The Appeal**

### **30.1 Appeal Panel Review and Hearing**

The Appeal Panel must review the materials provided by the Appeals Clerk under subsection 28.3 and conduct an appeal hearing.

#### ***30.1.1 Appeal Hearing Format***

Except as provided for in subsection 30.1.2, appeals will normally be conducted in writing. The Appeal Panel has the sole discretion, however, to convene a hearing in any manner, including in writing, by teleconference, video conference, or in person.

##### ***30.1.1.1 Materials on Appeal in Writing***

For an appeal in writing, the Appeal Panel must consider only the written materials prepared and filed in accordance with this Policy.

#### ***30.1.2 Exception: Credibility Issues***

Where the Appeal Panel concludes that an individual's credibility is a material issue in an appeal, the Appeal Panel must convene an in-person hearing and invite the Appellant and the Executive Director to appear in person, present evidence, and make oral submissions. Legal Counsel retained by either the Appellant and/or the Executive Director may also appear to represent their client at the hearing.

##### ***30.1.2.1 Virtual Hearings***

If the Appeal Panel determines that holding an in-person hearing under subsection 30.1.2 is not reasonably practicable in the circumstances, it may, at its sole discretion, convene a virtual hearing to be conducted in real time using online synchronous tools (e.g. videoconferencing). The Appeal Panel will determine the platform and/or tools used for the virtual hearing.

##### ***30.1.2.2 Appearance Costs***

Any Appellant who appears before the Appeal Panel at an in-person or virtual hearing must do so at their own expense (also see subsection 26.7).

##### ***30.1.2.3 Notice of In-person or Virtual Hearing***

If an in-person or virtual hearing is convened by the Appeal Panel, the Appeals Clerk must notify the Appellant and the Executive Director by email of the time and place of the appeal hearing **no less than fourteen (14) days** before the scheduled hearing date.

### **30.2 When Additional Information is Required by Appeal Panel**

If following a hearing under subsection 30.1 the Appeal Panel determines that there is insufficient information in the filed appeal materials to render a decision, the Appeal Panel may, at its sole discretion, remit the appeal to the Appeals Clerk to request further information from the Appellant and/or the Executive Director, as the case may be.



### **30.2.1 Responding to Request for Additional Information**

Within fourteen (14) days of receipt of the request, the Executive Director and/or the Appellant, as the case may be, must provide the additional information to the Appeals Clerk by email. The additional information must not exceed five (5) pages, excluding exhibits, unless otherwise directed by the Appeal Panel and must comply with any additional requirements imposed by the Appeal Panel.

#### **30.2.1.1 Delivery of Additional Material**

Within seven (7) days of receipt, the Appeals Clerk must provide the additional information specified in subsection 30.2.1 to the other party by email.

### **30.2.2 Opportunity to Respond to Other Party's Additional Information**

Within fourteen (14) days of receipt of additional information under subsection 30.2.1.1, the Executive Director or the Appellant, as the case may be, may respond to the additional information by email to the Appeals Clerk. The responding materials must not exceed five (5) pages, excluding exhibits, unless otherwise directed by the Appeal Panel.

#### **30.2.2.1 Delivery of Responding Material**

Within seven (7) days of receipt, the Appeals Clerk must provide any responding materials received under subsection 30.2.2 to the other party by email.

### **30.2.3 Reconsideration of NCA Decision by Executive Director**

If the Appellant provides additional information or responding materials under subsections 30.2.1 or 30.2.2, as the case may be, the Executive Director must, **within fourteen (14) days** of receipt of the information or materials, determine whether the information merits revising the NCA Decision and communicate their decision to the Appeals Clerk.

#### **30.2.3.1 Revised NCA Decision**

Within fourteen (14) days of receipt of any revised NCA Decision, the Appeals Clerk must notify the Appellant and the Appeal Panel and provide a copy of the revised NCA Decision to each of them by email. The Appeals Clerk must notify the Appellant of their options in relation to the revised NCA Decision and the deadline for responding.

##### **30.2.3.1.1 Appellant Accepts Revisions**

If the Appellant is satisfied with the revised NCA Decision, the Appellant must, **within seven (7) days**, confirm this by email to the Appeals Clerk. The appeal will be considered withdrawn and no further action will be taken by the Appeal Panel.

##### **30.2.3.1.2 Appellant Does Not Accept Revisions**

If the Appellant is not satisfied with the revised NCA Decision, the Appellant must, **within seven (7) days**, confirm this by email to the Appeals Clerk. The appeal will then proceed.

##### **30.2.3.1.3 Failure to Respond**

If the Appellant fails to communicate a position on the revised NCA Decision by email to the Appeals Clerk **within seven (7) days** of receiving it, the Appellant will be deemed to have accepted the revised NCA Decision and the appeal will be considered withdrawn as per subsection 30.2.3.1.1.



### **30.2.3.2 NCA Decision Unchanged**

If the Executive Director determines that the additional information provided does not merit revising the NCA Decision, the Appeals Clerk must notify the Appellant and the Appeal Panel by email **within seven (7) days** of being so advised by the Executive Director. The appeal will then proceed.

### **30.2.4 Scheduling a New Appeal Hearing Date**

If the NCA Decision is unchanged or the Appellant does not accept the revised NCA Decision, the Appeals Clerk must set a hearing date. The Appeals Clerk must notify the Appellant and the Executive Director of the hearing date by email **within fourteen (14) days** of the earlier of:

- the receipt of the Appellant's communication of non-acceptance of the revised NCA Decision under subsection 30.2.3.1.2; and
- the expiry of the seven (7) day deadline under subsection 30.2.3.1.3.

## **30.3 Materials Reviewed on Appeal**

The Appeal Panel must consider only materials filed or submitted in accordance with this Policy, including additional material provided under subsection 30.2 and oral submissions, if any.

## **31. Decisions of the Appeal Panel**

### **31.1 Standard of Review**

The standard of review on appeal is reasonableness.

### **31.2 NCA Decision is Determined to be Reasonable**

When the Appeal Panel concludes that the NCA Decision was reasonable, it must uphold the decision of the Executive Director and the NCA Decision will remain in force.

### **31.3 NCA Decision is Determined to be Not Reasonable**

When the Appeal Panel concludes that the NCA Decision was not reasonable, it may:

- set aside all or part of the NCA Decision and issue a new NCA Decision; or
- set aside all or part of the NCA Decision and refer the matter back to the Executive Director with such directions as the Appeal Panel considers appropriate.

### **31.4 Decisions in Writing**

The Appeal Panel must give written reasons for its decision on the appeal and provide a copy to the Appeals Clerk by email.

#### **31.4.1 Timing of Decision**

Under normal circumstances the Appeal Panel hearing an appeal must deliver its decision to the Appeals Clerk between **fifteen (15) and ninety (90) days after the completion of the hearing**.

##### **31.4.1.1 Decision Delayed by Extraordinary Circumstances**

In the unlikely event that, due to extraordinary circumstances, the Appeal Panel cannot issue the decision within the timeframe specified in subsection 31.4.1, the Appeal Panel must notify the Appeals Clerk, outlining the reason(s) for the delay, and issue its decision as soon as practicable after the ninety (90) days. The Appeals Clerk must notify the Appellant and the Executive Director of the delay and the reason(s) for the delay as soon as practicable after being notified by the Appeal Panel.





***31.4.2 Delivery of Decision to the Parties***

**Within seven (7) days** of receiving the Appeal Panel's written decision, the Appeals Clerk must email a copy of the decision to the Appellant and the Executive Director.

**31.5 No Further Right of Appeal**

The decision of the Appeal Panel is final and binding on all parties. There is no further right of appeal.

**32. Policy Subject to Change**

This Policy is subject to change at any time at the NCA's sole discretion without advance notice.

**33. Coming into Force**

This Policy comes into force effective March 31, 2023.