



**LAW SOCIETY OF PRINCE EDWARD ISLAND**

## **ARTICLING HANDBOOK**

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## **ARTICLING HANDBOOK**

Prepared by the A&A Committee

### **I INTRODUCTION**

The purpose of this handbook is to provide the articling student with useful information concerning the articling process and the practice of law on Prince Edward Island.

The articling process provides individuals with an opportunity to learn how to practice law efficiently and effectively. It also serves as a period of transition from the student's academic career to the practical realities of the practice of law. Experience has shown, however, that articling can sometimes be a confusing and frustrating process. We hope that this handbook will alleviate some of this frustration and confusion.

The Prince Edward Island Bar, which is small in comparison to other Provincial Bars, has a long and distinguished history. Its origins can be traced back to the mid to late 1700's, when Prince Edward Island became a British Colony. The small size of our Bar leads to a certain level of familiarity and informality. These factors often come as a surprise to articulated clerks or lawyers who come to Prince Edward Island from other jurisdictions.

### **II ENROLLMENT AS AN ARTICLED CLERK**

The first step prior to enrolling as an articulated clerk is to secure employment with a member of the Law Society of Prince Edward Island, who will serve as your principal. The principal must be a member in good standing and must have been in the actual practice of law in the Province of Prince Edward Island for at least five years.

Part II of the Regulations enacted under the *Legal Profession Act*, S.P.E.I. 1992, Cap. 39, governs applications for enrollment as an articulated clerk. It provides that to enroll as an articulated clerk you must have completed your law degree and, in attaining same, must have completed the mandatory course requirements established by the Law Society of PEI. A copy of your degree must be filed with the Law Society of PEI. You must also file with the Secretary-Treasurer of the Law Society a Declaration, Petition for Enrollment, Articles of Clerkship, Certificate of Qualifications and a Public Notice.

Pursuant to the Declaration, you must post the Public Notice. This Notice is to be posted in the Law Library located at the Charlottetown Court House or the Summerside Court House. The appropriate application fee must also be submitted. Your employer usually pays these fees.

Finally, there is a Law Society Application form which must be completed and submitted.

The calculation of the one (1) year period of articles will commence on the date the required fees and documents are submitted and accepted by the Secretary-Treasurer, provided Council approves your enrolment. Consequently, it is very important that you prepare and

submit the necessary documents immediately upon starting work. In fact, this should be the first thing that you do when you begin work in the offices of your principal.

Most law offices will have precedents that you can use to prepare these documents. Any further assistance or information required can be obtained by contacting the offices of the Law Society of PEI at 119 Kent Street, Suite 300, Charlottetown, Prince Edward Island (566-1666).

Once your documents and fees are submitted to the Secretary-Treasurer, the time period for your articles will commence. Your actual enrolment as an articled clerk will be approved by the Council of the Law Society of PEI at its next scheduled meeting.

### III **ASSIGNMENT OF ARTICLES**

The nature of the working relationship between the articled clerk and the principal will vary depending on such factors as the size of the law office and the personalities of the individuals. In any event, both the principal and the articled clerk are encouraged to maintain open lines of communication. The articled clerk is encouraged to ask questions when necessary.

Regulation 13 provides that articles of clerkship may be assigned to another principal, upon approval of the Council of the Law Society of PEI. As well, if your principal dies or ceases to be a member in good standing of the Law Society, you may, with the approval of Council, be articled to another lawyer.

### IV **TRANSFER OF ARTICLES TO PEI FROM ANOTHER JURISDICTION**

Regulation 15(7.1) of the Regulations enacted pursuant to the *Legal Profession Act*, supra, provides that an articled clerk who has served a period of articles in another province or territory in Canada may transfer credit for not more than six months articles from that other jurisdiction on the basis that the time spent articling in the other province or territory will be credited as an equal amount of time spent articling in this Province, if the period of articles in the other province is in the period immediately preceding or following the articles in this Province. If the individual has completed twelve months of articles in another jurisdiction in Canada and has been called to the Bar in that jurisdiction, he or she is not required to article in this jurisdiction, and may apply to transfer to the P.E.I. bar after completing various requirements appropriate to the circumstances (Reg. 17 & 17.1).

### V **THE ARTICLING EXPERIENCE**

Articling provides the student with an opportunity to gain practical experience in a variety of areas. There is a mutual responsibility on you and your principal to ensure that you gain exposure to as many areas of the law as possible. The extent to which you gain experience in one field of practice, as opposed to another, will depend on your particular interests and those of your principal. Common areas of practice in Prince Edward Island include commercial law, real estate, wills and estates, insurance, family law, criminal law, administrative law and civil litigation. The Law Society expects that your principal will make

every effort to expose you to a variety of areas of practice and in so doing facilitate your completion of the Articling Checklist (Reg. 15(9)).

Because of the relatively small size of the P.E.I. Bar, you will quickly become personally acquainted with members of the Law Society, members of the Judiciary, and the numerous court and registry officials. In addition to your principal and other co-workers, you will find that other members of the Bar and the various court officials and employees are an invaluable source of information and guidance. Many of the employees in the various court offices and land registry offices have held their positions for many years and are able to provide you with guidance and assistance.

Your articling experience will be a challenging period and, at times, a frustrating one. Do not hesitate to ask questions of your principal and co-workers. You may find that law school has not prepared you for the pressure of deadlines, and the often-confusing array of documents that are a part of the practice of law. If at times you feel confused or overwhelmed, rest assured that you are not alone. This is a common feeling amongst clerks and is part of your orientation to the practice of law.

## VI **MUTUAL RESPONSIBILITIES OF PRINCIPALS AND CLERKS GENERALLY**

Articles of clerkship place mutual responsibilities on the clerk and principal. The precedent for the articles of clerkship contained in Form No. 2 (Regulation 11(d)) contains the following description of the duties of an articulated clerk. They "... shall and will faithfully and diligently serve the barrister as their clerk in the practice of the profession of a barrister, solicitor and attorney of the Supreme Court of Prince Edward Island...".

What can sometimes be overlooked are the responsibilities of the principal to an articulated clerk. It is the responsibility of the principal to see that their clerk is instructed on the various aspects of the practice of law and of professional conduct.

### To the Principal:

The *Legal Profession Act, supra*, sets out in sub-section 19(5) and (6) the circumstances where articulated clerks may appear before the courts in the Province of Prince Edward Island. You are asked to familiarize yourself with these provisions and to ensure that your articulated clerk has the authority for court appearances, which may be proposed. It is emphasized that it is your responsibility to ensure that your articulated clerk obtains the required degree of knowledge and is supervised by you or a member of your firm in all proceedings before the Court. Principals are reminded that they are at all times responsible for the actions of their articulated clerks. In all matters, good judgment should be exercised by you in determining the level of experience required by the clerk.

Principals are asked to familiarize themselves with the Articling Checklist as it is expected that a clerk receive exposure to all areas set out in the checklist. The Checklist, completed by the clerk and their principal, must be submitted to the Law Society as part of the clerk's application for admission to the P.E.I. Bar (Reg. 15(9)).

Your clerk will request that you review the Articling Checklist together every three months during articles. This is an opportunity to review your clerk's progress in an informal setting and to determine the areas in which they may be deficient.

One of the most important responsibilities of the principal is to provide the student with adequate instruction in professional conduct, and responsibility before the courts, with clients, to the public and to other members of the legal profession. It is important to direct your clerk to the 1987 Canadian Bar Association Code of Professional Conduct, which has been adopted by the membership as the standard for practice in Prince Edward Island.

#### To the Clerk:

You are expected to approach the articling experience with a mature and responsible attitude. Up until this time your training has been of a largely academic nature. The purpose of the articling period is to provide you with the basic tools to carry on the practice of law. Emphasis, therefore, on the practical application of your training to the law is required. You are expected to dress appropriately as befits your profession, and to conduct yourself in a proper manner. Practice Note Number Two of the Supreme Court of Prince Edward Island deals with appropriate attire to be worn in Supreme Court.

You are encouraged to ask your principal to allow you to be present at interviews with clients in the taking of instructions, giving of opinions, preparing witnesses for trial and so on. You are expected to bring responsible and sensible work practices to your principal's office and, when in doubt, to ask questions.

You should work with the Articling Checklist and at least every three months you should meet with your principal to review the items that you have completed and discuss with them ways in which those areas of law in which you are deficient may be corrected. Familiarize yourself with the office practice and procedures that are followed in your principal's office. Become familiar with the operation of trust and general accounts and good business management practices in a law office.

### VII **COMPETENCE**

Principals and articled clerks should be reminded that the P.E.I. Law Society is concerned with the competence of its members and of articled clerks who may be called to the Bar. Articled clerks, as well as principals, should be aware that they have an obligation to their profession and to the public to keep up to date in all areas of law in which they choose to practice. The Law Society of Prince Edward Island, through its Continuing Legal Education Committee, offers to members and their articled clerks lectures and seminars on various areas of practice. As articled students, you are strongly encouraged to attend.

### VIII **ETHICS/PROFESSIONAL RESPONSIBILITY**

As an articled clerk, you should be aware that you are responsible to the Law Society of Prince Edward Island and its disciplinary process. In the past there have been problems with clerks appearing in court on matters not authorized by the *Legal Profession Act*, supra. Sections 19(5) and (6) of the *Act* provide:

19(5) An articled clerk may, unaccompanied by, but on the direction of his or her principal,

- (a) act as counsel or agent before a provincial court judge, a youth court judge or a justice of the peace,
  - (i) in a civil proceeding,
  - (ii) in a proceeding pertaining to an offence under provincial legislation punishable on summary conviction;
  - (iii) on an arraignment, or
  - (iv) to enter a plea in a criminal proceeding;
- (b) with the consent in writing of the client and the clerk's principal, act as counsel or agent before a provincial court judge or a youth court judge in a criminal proceeding punishable on summary conviction, or pertaining to an indictable offence in respect of which a provincial court judge or a youth court judge has absolute jurisdiction;
- (c) act as counsel on any uncontested motion, petition or other proceeding before a judge sitting in chambers;
- (d) act as counsel in the Small Claims Section of the Supreme Court.

19(6) An articled clerk may appear before any court, board or administrative tribunal accompanied by his or her principal.

The Council of the Law Society has directed that any other practice in the courts by articled clerks is unauthorized practice and will be considered a discipline matter involving both the clerk and the principal. [If you have a particular question concerning ethics, you may wish to refer to the Law Society's "Ethics Committee" whose members are available to provide ethical advice and guidance to lawyers and articled clerks.]

Articled clerks and their principals should be careful to identify articled clerks as such when dealing with clients. Articled clerks should always sign correspondence using the title "articled clerk". It is important that a client not be given a false impression that a clerk is a lawyer, even if the clerk has been admitted to the Bar of another jurisdiction.

## **IX LAW SOCIETY OF PRINCE EDWARD ISLAND**

The offices of the Law Society of Prince Edward Island are located at 119 Kent Street, Suite 300, in Charlottetown. The Law Society employs, at present, three staff members to manage the affairs of the Law Society, and a Librarian. Pursuant to the *Legal Profession Act*, supra, the Law Society of Prince Edward Island is empowered to regulate the practice of law in the province. The Council of the Law Society, which consists of members elected by their peers as well as two members from the general public, meets on a monthly basis to

deal with the various matters pertaining to the administration of the practice of law in the province.

Normally each year the Law Society holds two general meetings that are open to all members of the Law Society and to articulated clerks.

The annual meeting of the Law Society is held in the month of June. This meeting mixes both business and pleasure, and usually takes place over a weekend. For articulated clerks, this is a good opportunity to become acquainted with the affairs of the Law Society. It is also an opportunity for you to meet other articulated clerks, lawyers and judges in a relaxed and informal setting. The mid-winter meeting of the Law Society is usually held in the month of February of each year. Like the annual meeting, the mid-winter meeting takes place on a Friday and consists of a mixture of social and business functions. Articulated clerks are encouraged to attend both the annual meeting and the mid-winter meeting.

In a small Bar such as ours, members perform much of the work of the Law Society on a volunteer basis. Once you become a member of the Law Society of Prince Edward Island, you will be expected to participate in the affairs of the Society and, if asked, to serve on one of its committees.

## X **THE BAR ADMISSION COURSE**

The PEI Bar Admission Course is an in person six-week course offered in the fall of each year. Attendance is mandatory and completion of the course is a requirement prior to your admission to the bar. These six weeks are included in the calculation of your one-year articling period.

The instructors in the PEI Bar Admission Course are lawyers who are senior practitioners in their respective fields and volunteer their time to participate in the course. Instruction is currently provided in the following areas: Real Property, Family Law, Estates, Commercial and Corporate Law, Supreme Court Practice, Criminal Court Practice, Administrative Law, Ethics and Discipline, Legislation, Gender and Diversity, Human Rights, Indigenous Justice, Bankruptcy and Insolvency.

The course includes skills components consistent with the Federation of Law Societies National Competency Standards such as communications, teambuilding, negotiation, advocacy, identifying ethical issues and problems, practice management skills, conducting hearings and motions, and drafting legal documents.

Article clerks are assessed on practical skills and class participation throughout the Bar Admission Course. You will be required to complete assignments or exams which will be evaluated by your instructors and demonstrate that you have obtained the desired competencies.

An important focus of the PEI Bar Admission Course is building good relationships within the PEI bar and developing a healthy and sustainable practice. During the course, students will be introduced to many of the legal services available in PEI and have an opportunity to meet more than 50 members of the PEI bench and bar.

For more information on the PEI Bar Admission Course, including fees for the course and materials, you may contact the Law Society office. Bar Admission Course enrolment forms are due by July 15<sup>th</sup> of each year.

For more information on the PEI Bar Admission Course, you may wish to contact the Law Society Office.

## XI **ADMISSION TO THE BAR**

### Documentation:

Prior to your admission to the Bar, you will have to prepare and submit to the Secretary-Treasurer of the Law Society a number of documents pertaining to Admission to Bar. Most law offices will have precedents for the documentation required for admittance to the Bar. Also, precedents are contained in Form No. 4 of the Appendices to the Regulations enacted under the *Legal Profession Act*. The Law Society has also prepared an "admission checklist for articulated clerks" which helps to explain the required documentation. It is important that you prepare your admission documents early and submit them in draft form to the Secretary-Treasurer at least one week before the anticipated date of your Bar Admission. Your admission documents must be approved at the monthly meeting of the Council of the Law Society prior to your admission.

Form 4 includes an application stating that you have satisfied all bar admission requirements as evidenced by the supplementary documents attached as exhibits. Exhibit "A" to your Affidavit will be a photocopy of your law degree. Exhibit "B" will be an Affidavit from your principal. Exhibit "C" is a certificate from your principal. Other Exhibits may be added as required. At the top of each of these exhibits is stamped "This is Exhibit \_\_\_\_\_ referred to in the Application of \_\_\_\_\_ sworn before me this \_\_\_\_\_" and signed by the Commissioner who takes your oath.

You must also prepare the Petition as it is shown in Form 4. In this Petition, you state that you have completed all educational and training requirements required by the *Legal Profession Act*. You further indicate that you have paid all fees payable pursuant to the *Act* and that the Council of the Law Society has accepted your application for admission to the Bar. The Petition is stamped "This is the Petition referred to in the Affidavit of \_\_\_\_\_ dated \_\_\_\_\_" and is signed by the Commissioner.

Other admission documents include the Certificate of the Secretary-Treasurer in Form 4 and the Court Order in Form 4. The Order is signed by the Court during your admission when the Schedule "A" oaths are sworn and signed by the Clerk.

The Secretary-Treasurer signs the Certificate when all required forms have been executed and the fees paid and you may then file the documents with the court. The Secretary-Treasurer and other staff will be happy to answer any of your questions about the documents or admission requirements.

## XII **BAR ADMISSION CEREMONY**

The Bar Admission ceremony on Prince Edward Island is unique and reflects the traditions of the Bar.

In this Province, the ceremony takes place in the Supreme Court of Prince Edward Island in the form of a court hearing. You are petitioning the Court, pursuant to the *Legal Profession Act*, supra, for admittance to the Bar. The documentation is presented before the Court by your principal, and your principal asks the Court to grant the requested Order - namely, your admission to the Bar. This occasion is open to your family, friends and other members of the Bar. You will literally be "called to the Bar", at which time you will be required to take the oath of office as a barrister, solicitor and attorney of the Supreme Court of Prince Edward Island and the oath of allegiance to His Majesty, The King. The Law Society views this as an occasion whereby you and your family are able to take pride in your accomplishments and in your admittance to the Bar of the Province of Prince Edward Island.

It is up to you to make arrangements directly with the Court regarding your admission ceremony well in advance of the scheduled date of your admission. Should you wish to print and send invitations, this will also be your responsibility. It is common for articled clerks, in conjunction with their employers, to hold a reception for invited guests immediately following their Bar Admission.

## XIII **COMMISSIONER OF OATHS AND AFFIDAVITS, COMMISSIONER FOR DEEDS, NOTARY PUBLIC**

You may find it useful, particularly if you are articling in a smaller office, to apply for your Commission of Oaths while you are articling. An appointment as a Commissioner of Oaths allows you to swear Affidavits or Oaths for use in Supreme Court. You can obtain your Commission of Oaths by applying to the Prothonotary at the offices of the Supreme Court in either Charlottetown or Summerside.

Your appointment as a Commissioner for Deeds and as a Notary Public is automatically conferred upon your admittance to the Bar. The Secretary-Treasurer will file a Notice of Admission with the Registry Offices after your admission. A Commission of Deeds allows you to administer oaths on documents pertaining to land such as Deeds of Conveyance or Mortgages.

## XIV **P.E.I. COURT STRUCTURE**

As an articled clerk you will quickly become familiar with the various courts on the Island. Prince Edward Island, unlike some other Canadian jurisdictions, has three courts, the Court of Appeal, the Supreme Court, and the Provincial Court.

The P.E.I. Court of Appeal has three sitting Justices. The Supreme Court of P.E.I. consists of five Justices. There are several different Supreme Court sections, which include the Family Section, the Estates Section, the Small Claims Section, and the General Section.

The Provincial Court sits on a regular basis in several locations across the Island. There are Provincial Court rooms in Alberton, Summerside, Charlottetown and Georgetown. There are currently three full-time Provincial Court Judges in Prince Edward Island.

The Provincial Court judges have also been named Youth Court judges. Sittings in the Youth Court are held in the Provincial Courtrooms.

## XV **OTHER LEGAL OFFICES**

As you begin your articling period, you will find that one of your first challenges is to become familiar with all of the offices and officials that comprise the legal system on Prince Edward Island. The following is a brief description of some of these offices and officials.

### Legal Aid:

On Prince Edward Island, Legal Aid is available to certain individuals who are in need of legal representation and cannot afford a lawyer. There are two Legal Aid offices, one in Charlottetown and one in Summerside. Legal Aid provides coverage for individuals charged with criminal matters and some family matters.

### Crown Attorney's Offices:

In Charlottetown, the Crown Attorneys' offices are located at 15 Queen Street, Lowden Bldg, 3<sup>rd</sup> Floor. In Summerside, the Crown Attorney's office is located at 120 Harbour Drive.

### Registry Offices:

The Land Registry Office for Kings and Queens Counties is located at the Provincial Government Buildings in Charlottetown (Jones Building). The office of the Registry of Deeds for Prince County is located at 120 Harbour Drive, Summerside. As an articulated clerk, you will quickly become acquainted with these offices. These offices contain records of all conveyances of land, mortgages and other legal documents affecting the title to land. They also contain survey plans of various subdivisions, and records of Mechanics Liens.

### Probation Services:

If you deal with the area of criminal law, you will find that a sentence commonly includes a period of probation. The client will have to report to Probation Services, which in Charlottetown is located at the Customs House, 42 Great George Street, 2<sup>nd</sup> Floor, and at the Court House in Summerside.

### Family Court Counsellors and Mediation:

There are Family Court Counsellors with offices at Peake House, Water Street, in Charlottetown. Mediation is increasingly being used as an alternate method of resolving family disputes. In addition to mediation, the Family Court Counsellors conduct "home studies" which are sometimes required in family matters to make a determination on the decision-making responsibility and parenting times for children.

### Office of the Director of Maintenance Enforcement:

The offices of the Director of Maintenance Enforcement are located behind the Court House in Charlottetown at 1 Harbourside Access Road. The Director is charged with enforcing court awards of spousal and child maintenance. The Director may also enforce maintenance payable pursuant to a Separation Agreement.

### Sheriff's Office:

Prince Edward Island has a Sheriff in each of the three counties. The Sheriff's office fulfills several functions. The Sheriff frequently serves as an auctioneer at mortgage sales. As well, the Sheriff performs functions pursuant to the *Judgment and Execution Act* whereby they may be called upon to enforce a *Writ of Execution* against the chattels of a debtor.

### The Prothonotary of Supreme Court:

The Prothonotary of the Supreme Court is located at the Court House in Charlottetown. Pursuant to the Rules of Court, the Prothonotary exercises certain quasi-judicial functions. Many uncontested applications requiring a court order will be heard by the Prothonotary. The Prothonotary also serves as a court mediator in Small Claims Court. All civil actions consisting of a claim of \$16,000 or less are heard in Small Claims Court. Prior to receiving a trial date, however, both the Plaintiff and the Defendant, or their representatives, are required to attend a mediation session (Settlement Conference) before the Prothonotary. These sessions are aimed at achieving an early settlement and have proved to be very successful.

As an articulated clerk, you will quickly become acquainted with the Office of the Prothonotary.

### CLI:

"CLI" stands for "Community Legal Information" of Prince Edward Island. This is a non-profit organization dedicated to providing legal information on Prince Edward Island. CLI is located at 53 Grafton Street, Suite 202, Charlottetown. CLI has a legal information resource center and is active in providing printed information to the public concerning a variety of legal topics. CLI also provides a lawyer referral service, legal workshops and speakers to communities throughout Prince Edward Island, and looks for volunteers from members of the Bar and clerks.

### Law Foundation:

The Law Foundation is described at Part VII (Sections 49-51) of the *Legal Profession Act*, supra. The Law Foundation establishes and maintains a fund for the purpose of promoting legal education, research and law reform. It also provides funding for the editing and printing of decisions of the courts for law libraries in Charlottetown and Summerside, funds law libraries in Charlottetown and Summerside, and provides funds for the promotion of legal aid. Its funding comes from interest payable on lawyers' trust accounts. The P.E.I. Law Foundation office is located at the Law Society office.

Department of Justice and Public Safety:

The Legal Services Division of this Department employs lawyers to act as counsel for government and its various departments. Its office is located on the 4th floor, Shaw Building, 95 Rochford Street in Charlottetown.

P.E.I. Branch - Canadian Bar Association (the "CBA"):

The Canadian Bar Association is a nation-wide voluntary organization, devoted to promoting the interests of the legal profession, advocating law reform, and providing legal services to the public. The CBA office is currently located at 119 Kent Street, Suite 300, Charlottetown. The local Branch is very active and jointly sponsors the mid-winter and annual meetings with the Law Society of P.E.I. The Canadian Bar Insurance Association provides life, disability, business expense, fire, and auto insurance to its members.