

**SUPREME COURT OF CANADA**

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| **Citation:** Green *v.* Law Society of Manitoba, 2017 SCC 20, [2017] 1 S.C.R. 360 | **Appeal heard:** November 9, 2016**Judgment rendered:** March 30, 2017**Docket:** 36583 |

Between:

Sidney Green

Appellant

and

The Law Society of Manitoba

Respondent

- and -

Federation of Law Societies of Canada

Intervener

**Coram:** McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**(paras. 1 to 69) | Wagner J. (McLachlin C.J. and Moldaver, Karakatsanis and Gascon JJ. concurring) |
| **Dissenting Reasons:**(paras. 70 to 98) | Abella J. (Côté J. concurring) |

Green *v.* Law Society of Manitoba, 2017 SCC 20, [2017] 1 S.C.R. 360

Sidney Green Appellant

v.

The Law Society of Manitoba Respondent

and

Federation of Law Societies of Canada Intervener

**Indexed as:** Green ***v.*** Law Society of Manitoba

2017 SCC 20

File No.: 36583.

2016: November 9; 2017: March 30.

Present: McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for manitoba

 *Law of professions — Barristers and solicitors — Continuing professional development — Law Society suspending lawyer for failing to comply with Rules of the Law Society of Manitoba imposing mandatory professional development — Lawyer seeking declaration that impugned rules invalid because they impose suspension for non‑compliance without right to hearing or right of appeal — Whether rules valid in light of Law Society’s mandate under The Legal Profession Act, C.C.S.M., c. L107.*

 *Law of professions — Barristers and solicitors — Law society — Rules — Standard of review — Statute governing legal profession empowering benchers of Law Society of Manitoba to make rules of general application to profession — Standard of review applicable to rules made by Law Society.*

 G was called to the Bar in 1955 and has been a practising lawyer and member of The Law Society of Manitoba (“Law Society”) for over 60 years. Despite the Law Society’s mandatory rules requiring all practising lawyers to complete 12 hours of continuing professional development (“CPD”) a year, G did not report any CPD activities for 2012 or 2013. Over a year after G’s failure to report the completion of any CPD hours, the Law Society notified him that if he did not comply with the rules within 60 days, he would be suspended from practising law. G was also invited to correct any errors in his CPD record and was informed that it was possible for the 60‑day delay to be extended. G did not reply, nor did he apply for judicial review of the decision to suspend him. Rather, he challenged the validity of certain provisions of the *Rules of the Law Society of Manitoba* (“Rules”) with respect to CPD, by applying for declaratory relief. The application judge dismissed G’s application, concluding that the impugned rules fell squarely within the Law Society’s legislative mandate. The Court of Appeal dismissed the appeal for similar reasons.

 *Held* (Abella and Côté JJ. dissenting): The appeal should be dismissed.

 *Per* McLachlin C.J. and Moldaver, Karakatsanis, Wagner and Gascon JJ.: The standard applicable to the review of a law society rule is reasonableness. A rule will be set aside only if it is one no reasonable body informed by the relevant factors could have enacted. This means that the substance of the rule must conform to the rationale of the statutory regime set up by the legislature. Reasonableness is the appropriate standard for several reasons. First, in making rules of general application to the profession, the benchers of a law society act in a legislative capacity. The standard of review must reflect a law society’s broad discretion to regulate the legal profession on the basis of policy considerations related to the public interest. Second, many benchers of a law society are also elected by and accountable to members of the legal profession, and applying the reasonableness standard ensures that the courts will respect the benchers’ responsibility to serve those members. Third, a law society acts pursuant to its home statute in making rules such as those challenged by G, and as a result, there is a presumption that the appropriate standard is reasonableness. A law society must be afforded considerable latitude in making rules based on its interpretation of the “public interest” in the context of its enabling statute. Finally, a law society is a self‑governing professional body with expertise in regulating the legal profession at an institutional level.

 To determine whether the impugned rules are reasonable, the scope of the Law Society’s statutory mandate must first be construed. The purpose, words and scheme of *The Legal Profession Act* (“Act”), support an expansive construction of the Law Society’s rule‑making authority. The Law Society was given a broad public interest mandate and broad regulatory powers to accomplish its mandate — a mandate which must be interpreted using a broad and purposive approach. The wording and scheme of the Act are also indicative of the breadth of the Law Society’s authority and rule‑making power. In particular, it is empowered to establish consequences for contravening the Act or the Rules, such as a suspension, for failing to meet the educational standards it is statutorily required to put in place. Since the Law Society has the power to create a CPD scheme, it necessarily has the power to enforce the scheme’s standards.

 In this case, the impugned rules are reasonable in light of the Law Society’s statutory mandate. It is reasonable for the Rules to expose a lawyer to a suspension as a consequence for non‑compliance with the CPD program. The Act provides clear authority for the Law Society to create a CPD program that can be enforced by means of a suspension, and the overall purpose of the Act, the words used in it and the scheme of the Act show that the impugned rules are reasonable in light of the Law Society’s statutory mandate. A suspension, the purpose of which relates to compliance, not to punishment or professional competence, is a reasonable and effective way to ensure consistency of legal service across the province and to guarantee that even lawyers who are not interested in meeting the educational standards will comply. The right to practise law is not a common law right or a property right, but a statutory right that depends on the principles set out in the Act and the Rules.

 Moreover, imposing a suspension on members for failing to comply with the impugned rules without giving such members a right to a hearing or a right of appeal is not unreasonable in light of the Law Society’s statutory powers. Rather, it is entirely consistent with the Law Society’s duty to establish and enforce educational standards. The suspension at issue is administrative in nature, and the impugned rules reasonably include no right to a hearing or right of appeal because lawyers are solely in control of complying with the rules in question at their leisure. Only they can end the suspension by complying with the requirements. Further, the rules permitting a suspension are not self‑applying. In addition to a lawyer’s common law procedural rights, the rules permitting a suspension expressly vest the chief executive officer of the Law Society with discretion to ensure that the effect of the Rules is not overly harsh. A lawyer’s failure to comply with the impugned educational rules, even after having been warned and given an opportunity to seek an extension, provides clear justification for the Law Society to impose a temporary suspension.

 *Per* Abella and Côté JJ. (dissenting): The issue in this appeal is *not* whether the Law Society can impose a suspension for failing to complete the 12 annual hours of mandatory education courses, but whether it can impose an *automatic* one.

 A law society can only enact rules that are consistent with the purposes, scope and objectives of its enabling statute, and its authority to do so must be exercised in a reasonable manner. However, the fact that deference is owed does not mean that a law society has *carte blanche*; there are several grounds for finding delegated legislation to be unreasonable, such as where it is manifestly unjust.

 In Manitoba, the Law Society’s purpose is to “uphold and protect the public interest in the delivery of legal services with competence, integrity and independence”. Those are the core values of a lawyer’s professionalism. Protecting the public interest necessarily involves not only ensuring that a lawyer delivers legal services in accordance with those core values, but also protecting the public’s *perception* in the professionalism of the delivery. While the primary goal of the Law Society is the protection of the public interest, it cannot do so without also protecting the ability of its members to practise law professionally. A law society must, as a result, exercise its mandate in a way that not only protects the ability of lawyers to act professionally, but that also reinforces the public’s perception that lawyers are *behaving* professionally. The flip side is that a law society cannot enact rules which unreasonably undermine public confidence in lawyers.

 In this case, the Law Society’s rule that members who fail to complete 12 mandatory hours of continuing professional development activities in a calendar year are automatically suspended is unreasonable, because it is inconsistent with the Law Society’s mandate to protect the public’s confidence in the legal profession. When a lawyer is suspended, so is public confidence in him or her. That is why the Law Society takes such care in its investigation of complaints regarding professional misconduct or incompetence — it helps ensure that a suspension is imposed only after at least some minimal procedural protections have been provided, and then only after a range of lesser penalties has been considered. When a suspension is the result of such a process, the loss of public confidence is warranted. Where, however, a suspension is imposed automatically for the *least* serious disciplinary breach possible — failing to attend 12 hours of classes — the Law Society is in breach of its duty to protect the public from the needless erosion of trust in the professionalism of lawyers.

 The economic costs of the suspension are manifest, as are the reputational ones, especially since the rules require the chief executive officer to notify every member of the Law Society and each of the chief justices of the courts in Manitoba of the name of a member who is suspended. This is the only competence matter regulated by the Law Society that has no procedural protections, no range of remedies, and no discretionary leeway on the part of the chief executive officer, and it alone attracts an automatic suspension, regardless of justificatory circumstances. This makes it arbitrary. The absence of discretion, procedural fairness or remedial options stands in stark contrast to other provisions of the Act or Rules furthering the Law Society’s mandate to establish standards for the competence of lawyers. It also stands in stark contrast to the regulations, policies and by‑laws of the continuing professional development requirements of most other Canadian provinces and territories.

 The lack of discretion in this case is fatal. A rule that leads to an *automatic* suspension for failing to attend 12 hours of continuing professional development is so far removed from ensuring the public’s confidence in lawyers that it is manifestly unjust, and therefore, unreasonable.

**Cases Cited**

By Wagner J.

 **Applied:** *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5;**referred to:** *Canadian* *National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135; *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247; *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, [2013] 2 S.C.R. 649; *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140; *Culligan v. Miller, J.* (1996), 178 N.B.R. (2d) 321; *Shewchuk‑Dann v. Assn. of Social Workers (Alberta)* (1996), 38 Admin. L.R. (2d) 19; *Laferrière v. Canada (Attorney General)*, 2015 FC 612; *Irwin v. Alberta Veterinary Medical Association*, 2015 ABCA 396, 609 A.R. 299; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Baker v. Canada (Minister of Citizenship and Immigration)*,[1999] 2 S.C.R. 817; *Moreau‑Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504; *Kruse v. Johnson*, [1898] 2 Q.B. 91.

By Abella J. (dissenting)

*Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266; *Kruse v. Johnson*, [1898] 2 Q.B. 91; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113; *Canada (Attorney General) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307; *Pett v. Greyhound Racing Assn., Ltd.*, [1968] 2 All E.R. 545; *Joplin v. Chief Constable of the City of Vancouver* (1982), 144 D.L.R. (3d) 285; *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105.

**Statutes and Regulations Cited**

*By‑Law 6.1 — Continuing Professional Development* [made under the *Law Society Act*, R.S.O. 1990, c. L.8], s. 2(4).

*Interpretation Act*, C.C.S.M., c. I80, ss. 6, 32(1).

*Law Society Rules 2015* [made under the *Legal Profession Act*, S.B.C. 1998, c. 9], rr. 3‑29(1), (5), 3‑32.

*Legal Profession Act*, C.C.S.M., c. L107, ss. 3, 4(1), (2), (5), (6), 5, 12(2), 19(5), 43(c)(ii), 65, 68(b), (c), 72, 75(1), 76(1)(a)(i).

*Règlement sur la formation continue obligatoire des avocats*, CQLR, c. B‑1, r. 12, ss. 15 to 17.

*Regulations* [made under the *Legal Profession Act*, S.N.S. 2004, c. 28], r. 8.3.9.

*Rules of the Law Society of Manitoba* [made under *The Legal Profession Act*, C.C.S.M., c. L107], rr. 2‑81.1(1), (6), (8), (9), (12), (13), 2‑81.2(3), 2‑88, 2‑91, 2‑97, 5‑47(10), 5‑64(2), (3), 5‑65(1), 5‑66, 5‑72(1), (4), 5‑74(1), 5‑81(2), 5‑96(2).

*Rules of the Law Society of Yukon* [made under the *Legal Profession Act*, R.S.Y. 2002, c. 134], r. 95.3(5).

*Rules on Mandatory Continuing Professional Development* [made under the *Law Society Act, 1996*, S.N.B. 1996, c. 89], ss. 7(1) to (3), 8(1), (2).

**Authors Cited**

Barreau du Québec. *Guide sur les dispenses de l’obligation de formation continue*, édité en mars 2015, p. 10 (online: http://www.barreau.qc.ca/pdf/publications/guides‑fco/fco‑guide‑dispenses.pdf; archived version: <http://www.scc-csc.ca/cso-dce/2017SCC-CSC20_1_fra.pdf>).

Brown, Donald J. M., and John M. Evans, with the assistance of David Fairlie. *Judicial Review of Administrative Action in Canada*. Toronto: Thomson Reuters, 2013 (loose‑leaf updated December 2016, release 4).

Huscroft, Grant. “From Natural Justice to Fairness: Thresholds, Content, and the Role of Judicial Review”, in Flood, Colleen M., and Lorne Sossin, eds., *Administrative Law in Context*, 2nd ed. Toronto: Emond Montgomery, 2013, 147.

Law Society of Saskatchewan. *Continuing Professional Development Policy*, revised September 15, 2016, sections 16, 18, and 19 (online: https://www.lawsociety.sk.ca/media/61741/policy.pdf; archived version: [http://www.scc‑csc.ca/cso‑dce/2017SCC‑CSC20\_2\_eng.pdf](http://www.scc-csc.ca/cso-dce/2017SCC-CSC20_2_eng.pdf)).

MacKenzie, Gavin. *Lawyers and Ethics: Professional Responsibility and Discipline*, 5th ed. Toronto: Carswell, 2009.

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 6thed. Markham, Ont.: LexisNexis, 2014.

 APPEAL from a judgment of the Manitoba Court of Appeal (Monnin, Cameron and Mainella JJ.A.), 2015 MBCA 67, 319 Man. R. (2d) 189, 638 W.A.C. 189, 75 C.P.C. (7th) 73, 386 D.L.R. (4th) 511, [2015] 10 W.W.R. 239, [2015] M.J. No. 175 (QL), 2015 CarswellMan 332 (WL Can.), affirming a decision of Rempel J., 2014 MBQB 249, 313 Man. R. (2d) 19, 66 C.P.C. (7th) 430, [2015] 5 W.W.R. 769, [2014] M.J. No. 350 (QL), 2014 CarswellMan 760 (WL Can.). Appeal dismissed, Abella and Côté JJ. dissenting.

 Charles R. Huband and Kevin T. Williams, for the appellant.

 Rocky Kravetsky and *Jeffrey W. Beedell*, for the respondent.

 Neil Finkelstein and Brandon Kain, for the intervener.

 The judgment of McLachlin C.J. and Moldaver, Karakatsanis, Wagner and Gascon JJ. was delivered by

 Wagner J. —

1. Introduction
2. A lawyer’s professional education is a lifelong process. Legislation is amended, the common law evolves, and practice standards change as a result of technological advances and other developments. Lawyers must be vigilant in order to update their knowledge, strengthen their skills, and ensure that they adhere to accepted ethical and professional standards in their practices.
3. This appeal concerns a basic component of a lawyer’s education: continuing professional development (“CPD”). At issue is whether The Law Society of Manitoba (“Law Society”) can impose rules that couple a mandatory CPD program with a possible suspension for failing to meet the program’s requirements.
4. I agree with the courts below that the Law Society has the authority to do so. The Law Society is required by statute to protect members of the public who seek to obtain legal services by establishing and enforcing educational standards for practising lawyers. CPD programs serve this public interest and enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada. Most law societies across the country have implemented compulsory CPD programs.
5. But educational standards can ensure consistency of legal service only if lawyers adhere to them. If a lawyer fails to complete the required hours of training (“CPD hours”) even after having been warned, temporarily suspending him or her until those hours are completed is a reasonable way to ensure compliance. This suspension is administrative, not punitive, in nature.
6. The appeal should be dismissed. The impugned rules with respect to CPD are reasonable in light of the importance of CPD programs and the Law Society’s broad rule-making authority over the maintenance of educational standards.
7. Facts
8. The appellant, Mr. Sidney Green, was called to the Bar of Manitoba in 1955. He has been a practising lawyer and member of the Law Society for over 60 years. Mr. Green has served as a bencher of the Law Society[[1]](#footnote-1) and has also participated and lectured in many CPD activities. He has no discipline record and does not face any disciplinary charges.
9. In this case, Mr. Green is challenging the provisions of the *Rules of the Law Society of Manitoba* (“Rules”) that make its CPD program mandatory. Manitoba’s program has not always been mandatory. In 2007, as a first step, the benchers approved rules requiring that all lawyers report their CPD hours. The Law Society collected and studied the CPD hours reported by its members over a two-year period. Many members had reported completing no CPD activities or less than one hour of such activities per month. Subsequently, the Law Society’s Admissions and Education Committee (“Committee”) recommended that the benchers move to a mandatory CPD program. At about the same time, the Chief Executive Officer (“CEO”) of the Law Society wrote a memorandum to the benchers in which he indicated that voluntary CPD was not working.
10. From late March 2010 to May 2011, the benchers considered making the CPD program mandatory, consulting the members on that subject. Over that period, the benchers and the Committee each met several times and received a variety of comments and other input. Mr. Green made no submissions to the benchers on the proposed CPD requirements even though the Law Society had invited its members to do so.
11. The benchers subsequently approved mandatory CPD and amended the Rules to require all practising lawyers to complete CPD hours (one hour per month of practice for a total of 12 hours a year). Failing to comply with this requirement may lead to the suspension of a lawyer’s licence to practise. The Rules specifically provide:

**2-81.1(8)** Commencing January 1, 2012, and subject to subsection (10), a practising lawyer must complete one hour of eligible activities for each month or part of a month in a calendar year during which the lawyer maintained active practising status. . . .

 . .

**2-81.1(12)**  Where a practising lawyer fails to comply with subsection (8), the chief executive officer may send a letter to the lawyer advising that he or she must comply with the requirements within 60 days from the date the letter is sent. A member who fails to comply within 60 days is automatically suspended from practising law until such time as the requirements have been met and a reinstatement fee paid.

**2-81.1(13)** Where a member is suspended more than once for failing to comply with subsection (8), the chief executive officer may also refer the matter to the complaints investigation committee for its consideration.

1. Despite these mandatory rules, Mr. Green did not report any CPD activities for 2012 or 2013. On May 30, 2014, over a year after Mr. Green had first failed to report the completion of any CPD hours, the CEO of the Law Society sent Mr. Green a letter notifying him that if he did not comply with the Rules within 60 days, he would be suspended from practising law. The CEO also invited Mr. Green to correct any errors in his self-reported CPD record and informed him that it was possible for the 60 days he had to complete his hours to be extended.
2. Mr. Green did not reply to the letter, nor did he apply for judicial review of the decision to suspend him. Rather, he applied for declaratory relief on June 25, 2014, challenging the validity of certain provisions of the Rules with respect to CPD (“impugned rules”). Although the Law Society subsequently suspended Mr. Green’s practising certificate effective July 30, 2014, it has agreed not to enforce the suspension until after the litigation has been resolved.
3. Decisions Below
	1. Manitoba Court of Queen’s Bench, 2014 MBQB 249, 313 Man. R. (2d) 19
4. The application judge dismissed Mr. Green’s application, concluding that the impugned rules fall squarely within the Law Society’s legislative mandate under *The Legal Profession Act*, C.C.S.M., c. L107 (“Act”). The Law Society is required to “establish standards for the education, professional responsibility and competence” of lawyers (s. 3(2)). As a result, the impugned rules are consistent with the Law Society’s broad power under s. 4(5) of the Act to make rules it deems advisable in order to pursue its statutory purpose and uphold the public interest.
5. The application judge also dismissed arguments raised by Mr. Green with respect to natural justice and procedural fairness.
	1. Manitoba Court of Appeal, 2015 MBCA 67, 319 Man. R. (2d) 189
6. The Court of Appeal dismissed the appeal for reasons similar to those of the application judge. It noted that the Law Society’s constituent Act is a public interest statute designed to protect members of the public who seek to obtain legal services and concluded that the Law Society’s rule-making power must be given a broad and liberal interpretation in order to achieve that objective.
7. Mr. Green conceded in the Court of Appeal that the Law Society has the power to make rules to set up a CPD program. The court held that the Law Society also has the power to make such a program mandatory and to establish consequences under s. 65 of the Act for failing to comply with the program.
8. Further, the Court of Appeal found that the suspension of a lawyer for failing to complete his or her CPD hours is an administrative decision that does not require implementation of the more extensive procedures that apply where a lawyer has been charged with professional misconduct or incompetence (as set out in s. 72 of the Act).
9. Issues
10. This case raises two questions: (1) What standard of review applies to a question regarding the validity of rules made by a law society? (2) Having regard to the appropriate standard of review, are the impugned rules valid in light of the Law Society’s mandate under the Act?
11. Analysis
12. Mr. Green has challenged the impugned rules because he has no interest in complying with them. Since these rules came into force in 2012, Mr. Green has not reported completing any CPD hours. He argues that the impugned rules are unfair because they impose a suspension without a right to a hearing or a right of appeal. Yet Mr. Green has not applied for judicial review of the Law Society’s decision to suspend him. He has not complained that the Law Society treated him unfairly. Mr. Green is challenging these rules on these procedural grounds, not for fear of injustice. He is simply not interested in attending a mandated number of CPD activities.
13. Despite these motivations for Mr. Green’s challenge to the impugned rules, this Court must now determine whether those rules fall outside the Law Society’s statutory mandate. The Court has never addressed the appropriate standard of review to be applied when considering the validity of rules made by a law society. The standard of review framework from *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, applies in this case because it is applicable to “all exercises of public authority” and to “those who exercise statutory powers”: para. 28; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 53.
	1. Standard of Review Is Reasonableness
14. In my view, the standard applicable to the review of a law society rule is reasonableness. A law society rule will be set aside only if the rule “is one no reasonable body informed by [the relevant] factors could have [enacted]”: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 24. This means “that the substance of [law society rules] must conform to the rationale of the statutory regime set up by the legislature”: *Catalyst Paper*, at para. 25; see also *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at para. 25.
15. Rules made by law societies are akin to bylaws passed by municipal councils. McLachlin C.J. explained the rationale for this standard of review in *Catalyst Paper*:

. . . review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation.  Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature.  Bylaws are not quasi-judicial decisions.  Rather, they involve an array of social, economic, political and other non-legal considerations. [para. 19]

1. Similar considerations are relevant in the context of rules made by a law society. In the case at bar, the legislature specifically gave the Law Society a broad discretion to regulate the legal profession on the basis of a number of policy considerations related to the public interest. The Act empowers the benchers of the Law Society to make rules of general application to the profession, and in doing so, the benchers act in a legislative capacity.
2. Further, reasonableness is the appropriate standard because many of the benchers of the Law Society are elected by and accountable to members of the legal profession. While it is true that the public does not directly vote for the benchers, the rules the benchers make apply only to members of the profession. Thus, McLachlin C.J.’s comments in *Catalyst Paper* in the context of municipal bylaws are apt here as well: “. . . reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable” (para. 19).
3. Beyond the specific guidance provided in *Catalyst Paper*, which I find applicable in the instant case, the general principles developed by the Court in respect of the standard of review also support the argument that reasonableness is the appropriate standard. The Law Society acted pursuant to its home statute in making the impugned rules, and in such a case there is a presumption that the appropriate standard is reasonableness: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at paras. 34 and 39. The Law Society must therefore be afforded considerable latitude in making rules based on its interpretation of the “public interest” in the context of its enabling statute: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 50 and 87.
4. Additionally, the Law Society has expertise in regulating the legal profession “at an institutional level”: *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293, at para. 33. This Court has previously recognized that self-governing professional bodies have particular expertise when it comes to deciding on the policies and procedures that govern the practice of their professions: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 887.
	1. Are the Impugned Rules Reasonable in Light of the Law Society’s Mandate Under the Act?
5. To determine whether the impugned rules are reasonable, I am adopting a two-step approach. First, I will construe the scope of the Law Society’s statutory mandate in accordance with this Court’s modern principle of statutory interpretation: *Rizzo & Rizzo Shoes Ltd*. *(Re)*, [1998] 1 S.C.R. 27, at para. 21. Second, I will address whether, in light of this mandate, the impugned rules are unreasonable because they expose a lawyer to a suspension in the event of non-compliance and unreasonable having regard to their procedural protections.
	* 1. Statutory Mandate
6. The purpose, words, and scheme of the Act support an expansive construction of the Law Society’s rule-making authority.
	* + 1. Object of the Act
7. I will begin with the object of the Act. The legislature has given the Law Society a broad public interest mandate and broad regulatory powers to accomplish its mandate. This mandate must be interpreted using a broad and purposive approach: *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, at paras. 6-8; *The Interpretation Act*, C.C.S.M., c. I80, s. 6.
8. First of all, the Act contains an expansive purpose clause that obligates the Law Society to act in the public interest: “The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence” (s. 3(1)). The meaning of “public interest” in the context of the Act is for the Law Society to determine. In pursuing this purpose, the Law Society *must* “(a) establish standards for the education . . . of persons practising or seeking the right to practise law in Manitoba; and (b) regulate the practice of law in Manitoba” (s. 3(2)).
9. Moreover, the independence the legislature has given the Law Society under the Act is evidence of an intention to give the Law Society all necessary powers to regulate its members. As this Court once wrote, Manitoba’s legal profession “is self-governing in virtually every aspect”: *Pearlman*, at p. 886.
10. Finally, construing the Law Society’s rule-making authority broadly is consistent with the approach taken by the Court in previous cases. For example, Iacobucci J. wrote in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, that “[t]he Law Society is clearly intended to be the primary body that articulates and enforces professional standards among its members” (para. 40). Further, McLachlin C.J. wrote in *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, [2013] 2 S.C.R. 649, that “[t]he purpose of law society regulation is to establish general rules applicable to all members to ensure ethical conduct, protect the public and discipline lawyers who breach the rules — in short, the good governance of the profession” (para. 15). These expansive assertions are indicative of the breadth of the Law Society’s regulatory authority.
	* + 1. The Words in Their Ordinary and Grammatical Sense
11. The wording of the Act is also indicative of the breadth of the Law Society’s authority and its rule-making power. The Act imposes on the benchers a duty to “establish standards for the education . . . of persons practising . . . law” in Manitoba (s. 3(2)(a)). Sections 4(5) and 4(6) of the Act vest the Law Society with an open-ended rule-making authority to ensure that it can achieve this and its other public interest objectives. Section 4(5) provides that, “[i]n addition to any specific power or requirement to make rules”, the benchers may make rules to “pursue [the Law Society’s] purpose and carry out its duties”. Therefore, in addition to the powers already identified in the Act, the benchers can make rules furthering the Law Society’s purpose and duties. Section 4(6) provides that the rules made by the benchers are binding on all Law Society members.
12. More explicitly, the Act provides that the benchers may “establish and maintain, or otherwise support, a system of legal education, including . . . a continuing legal education program” (s. 43(c)(ii)).
13. Regarding a possible suspension, s. 65 specifically empowers the Law Society “to establish consequences for contravening this Act or the rules”. This language could hardly be clearer ― the Law Society can establish consequences, such as a suspension, for failing to meet the educational standards it is statutorily required to put in place.
14. Mr. Green relies on the “implied exclusion rule” of statutory interpretation to argue that a suspension cannot be imposed under the Act. In his opinion, because the Act specifically empowers the Law Society to impose a “suspension” in four specific situations but not in the CPD context, the legislature intended to exclude a suspension as a consequence in any situation other than those in which it is mentioned.
15. This argument is flawed for two reasons. First, it disregards the proper approach to assessing the legalityof the impugned rules. What the Court must do is to determine not whether the Act specifically refers to this power, but whether the impugned rules are reasonable in light of the Law Society’s statutory mandate.
16. Second, Mr. Green’s argument is inconsistent with this Court’s purposive approach to statutory interpretation. An argument based on implied exclusion is purely textual in nature and cannot be the sole basis for interpreting a statute: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at pp. 256-57. The words of the statute must be considered in conjunction with its purpose and its scheme. In my view, the purpose of the Act supplements the open-ended wording of the relevant provisions to indicate that the implied exclusion rule should not be applied in this case.
	* + 1. Scheme of the Act
17. The scheme of the Act further undermines Mr. Green’s position. It must be borne in mind that the Act does not require the Law Society to set up a CPD program. Rather, it provides that the benchers “may” establish and maintain such a program (s. 43(c)(ii)). It would be pointless for the legislature to establish consequences for failing to comply with a program that the Law Society is not even required to set up.
18. While it is true that there are only four provisions of the Act that mention “suspension” as a potential consequence, each of them is responsive to a mandatory rule or procedure that is in fact provided for in the Act. A suspension for failing to pay fees is responsive to the obligation that members pay fees (s. 19(5)). A suspension imposed by the Complaints Investigation Committee is responsive to that committee’s obligation to investigate complaints (s. 68(c)). A suspension imposed by the Discipline Committee is responsive to that committee’s obligation to conduct disciplinary proceedings (s. 72(1) and (2)). The Act requires the payment of fees and the establishment of the committees in question and then establishes powers and consequences that are incidental to them.
19. In contrast, the Law Society is not required to set up a CPD program (s. 43(c)(ii)). If the legislature had explicitly set out the possible consequences for failing to comply with CPD requirements, but the Law Society never imposed any such requirements, the provisions setting out these consequences would be superfluous. The legislature does not enact unnecessary provisions.
20. In my view, the Act’s express references to “suspension” are not indicative of an intention to restrict suspensions to specific circumstances. Rather, these references show that where the legislature intended to confer disciplinary powers on a committee or specify the consequences for a breach of a legislated requirement, it did so expressly. Otherwise, the legislature gave the Law Society the discretion, in exercising its general rule-making authority, to establish consequences for contravening the Rules. This is clear from the broad scope of the authority to make rules and establish consequences that is provided for in ss. 4(5) and 65.
21. In any event, since the Law Society has the power to create a CPD scheme, it necessarily has the power to enforce the scheme’s standards. Given the breadth of the statutory authority, the Act must be construed such that the powers it confers “include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature”: *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 51. This is consistent with s. 32(1) of *The Interpretation Act*, which provides that “[t]he power to do a thing or to require or enforce the doing of a thing includes all necessary incidental powers.”
	* 1. Is It Reasonable for the Rules to Expose a Lawyer to a Suspension as a Consequence for Non-compliance With the CPD Program?
22. Having construed the Act, I will now turn to the reasonableness of the impugned rules.Mr. Green conceded in the Court of Appeal that the Law Society has authority to make rules to establish a CPD program. And he further conceded in this Court, contrary to his position in the courts below, that the Law Society can make that program mandatory. The question that remains is whether the impugned rules are unreasonable because they permit the imposition of a suspension on a lawyer for failing to comply with the mandatory program.
23. In my view, the Act provides clear authority for the Law Society to create a CPD program that can be enforced by means of a suspension. Specifically, ss. 3, 4(5), 4(6), 43(c)(ii) and 65, as interpreted in relation to the Act’s public interest purpose, provide statutory authority for the impugned rules. The overall purpose of the Act, the words used in it and the scheme of the Act show that the impugned rules are reasonable in light of the Law Society’s statutory mandate.
24. The establishment of mandatory standards such as those provided for in the impugned rules is compatible with the Law Society’s purpose and duties as set out in s. 3 of the Act. I agree with the Court of Appeal that “[t]o set such a [mandatory] standard in order to maintain a practicing certificate which, in the benchers’ view, serves to protect the public, is in keeping with the duties given to the Law Society under the Act” (para. 17 (emphasis deleted)).
25. To ensure that those standards have an effect, the Law Society must establish consequences for those who fail to adhere to them. As a practical matter, an unenforced educational standard is not a standard at all, but is merely aspirational.
26. A suspension is a reasonable way to ensure that lawyers comply with the CPD program’s educational requirements. Its purpose relates to compliance, not to punishment or professional competence. Other consequences, such as fines, may not ensure that the Law Society’s members comply with those requirements. An educational program that one can opt out of by paying a fine is not genuinely universal. I am mindful of the fact that in making these mandatory rules, the Law Society was responding to the reality that many lawyers in Manitoba had not complied with the CPD program when it was voluntary.
27. To ensure consistency of legal service across the province, the possibility of a suspension effectively guarantees that even lawyers who are not interested in meeting the educational standards will comply. Mr. Green submits that, in his opinion, the CPD activities that were made available to him would not have been helpful to him in his practice. But it is not up to Mr. Green to decide whether CPD activities are valuable or adequate. The legislature has decided that the Law Society must impose educational standards on practising lawyers (s. 3(2)) and that it is for the Law Society to determine the nature of those standards.
28. Mr. Green also argues that the impugned rules exposing a lawyer to a suspension are unreasonable because his “common law right” to practise law cannot be taken away absent clear legislative language. This argument is unpersuasive. The right to practise law is not a common law right or a property right, but a statutory right that depends on the principles set out in the Act and the rules made by the Law Society. As this Court has stated, “the Law Society has total control over who can practise law in the province, over the conditions or requirements placed upon those who practise and, perhaps most importantly, over the means of enforcing respect for those conditions or requirements”: *Pearlman*, at p. 886. The Law Society has not interfered with Mr. Green’s rights. It is merely doing what the statute requires it to do: regulate the education of lawyers in the public interest.
29. In light of the relevant provisions of the Act and practical concerns related to enforcing educational standards, the provisions of the rules establishing a mandatory CPD program that permit the suspension of a lawyer as a consequence for contravening those rules are not unreasonable.
	* 1. Is It Reasonable for the Rules to Expose a Lawyer to a Suspension Without a Right to a Hearing or a Right of Appeal?
30. Mr. Green also challenges the impugned rules from the standpoint of procedural fairness. He argues that the rules in question are invalid because they provide for the suspension of a member without a right to a hearing or a right of appeal. In my view, this challenge to the rules is inappropriate in the context of an application for declaratory relief. The common law duty of procedural fairness applies only to a specific decision made by the Law Society that affects a lawyer’s interests. Given that Mr. Green has not applied for judicial review of the decision to suspend him, all he can do is allege that the impugned rules are not reasonable given the Law Society’s authority under the Act.
31. In light of the administrative nature of the suspension and the discretion the CEO has under the Rules when imposing a suspension, I conclude that the fact that the impugned rules do not provide for a right to a hearing or a right of appeal does not make them unreasonable.
	* + 1. Rules Are Not Exhaustive of Common Law Procedural Rights
32. The common law duty of procedural fairness does not reside in a set of enacted rules. As Brown and Evans explain, “delegated legislation that apparently permits a fundamental breach of the duty of fairness will not normally be found to be exhaustive of procedural rights”: *Judicial Review of Administrative Action in Canada* (loose-leaf), at topic 7:1512. A statutory decision-maker can always provide for procedures in addition to those set out in a rule in order to ensure that the dictates of procedural fairness are met: see *Culligan v. Miller, J.* (1996), 178 N.B.R. (2d) 321 (Q.B.), at paras. 23-24; *Shewchuk-Dann v. Assn. of Social Workers (Alberta)* (1996), 38 Admin. L.R. (2d) 19 (C.A.); *Laferrière v. Canada (Attorney General)*, 2015 FC 612, at paras. 13-14 (CanLII); *Irwin v. Alberta Veterinary Medical Association*, 2015 ABCA 396, 609 A.R. 299, at paras. 58 and 63. However, the common law duty of fairness “supplements existing statutory duties and fills the gap” where procedures are not provided for explicitly: G. Huscroft, “From Natural Justice to Fairness: Thresholds, Content, and the Role of Judicial Review”, in C. M. Flood and L. Sossin, eds., *Administrative Law in Context* (2nd ed. 2013), 147,at p. 152.
33. Had Mr. Green challenged the Law Society’s decision to suspend him instead of simply challenging the impugned rules, this Court could have examined the specific procedure that the Law Society followed in making its decision. If the Law Society’s decision was made in a manner that was not procedurally fair, the decision would then have been quashed. But the duty of fairness is engaged only if the Law Society makes a decision that affects the “rights, privileges or interests of an individual” by, for example, imposing a suspension, not when it acts in a legislative capacity to make rules of general application in the public interest: *Dunsmuir*, at para. 79; see also *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 669.
34. In framing his challenge to the Rules in this way, Mr. Green wrongly assumes that the Law Society will not take its duty of procedural fairness seriously and provide for an appropriate procedure that is responsive to the particular facts and the reasonable expectations of the parties. The benchers can delegate authority to the CEO to provide for additional procedures if the circumstances of a particular case justify protections broader than those set out in the Rules. The Act authorizes the benchers to “take any action consistent with [the] Act that they consider necessary for the promotion, protection, interest or welfare of the society” and to delegate that authority to the CEO (ss. 4(2) and 12(2)).
35. Moreover, whether a decision is procedurally fair must be determined on a case-by-case basis. This Court has long recognized that the requirements of the duty of fairness are “eminently variable and [that] its content is to be decided in the specific context of each case”: *Dunsmuir*,at para. 79, quoting *Knight*, at p. 682, *Baker v. Canada (Minister of Citizenship and Immigration)*,[1999] 2 S.C.R. 817, at para. 21, and *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at paras. 74-75; see also *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504, at para. 42. Absent an application for judicial review, it would be unwise for this Court to express an opinion on what procedure the Law Society might follow in making such a decision.
36. Although the Law Society’s decision to suspend Mr. Green was not challenged, it shows why procedural fairness cannot be assessed in a factual vacuum. In his letter to Mr. Green, the CEO invited Mr. Green to correct any errors in his CPD report and wrote that the Law Society would “be happy to grant reasonable extensions” to enable him to complete the missing hours. However, the CEO has no such powers under the Rules. Rather, his power is limited to extending the time for members to report their CPD activities or file their annual reports (rr. 2-81.1(6) and 2-81.2(3)). The CEO was thus willing to adopt a more generous procedure in Mr. Green’s case than the one provided for in the Rules by inviting Mr. Green to respond and by offering to consider a request for an extension.
	* + 1. The Rules Imposing an Administrative Suspension Without a Right to a Hearing or a Right of Appeal Are Reasonable
37. Given that Mr. Green did not contest the Law Society’s decision, his procedural arguments are merely another way to challenge the validity of the impugned rules. In my view, imposing an administrative suspension on members for failing to comply with the impugned rules without giving such members a right to a hearing or a right of appeal is not unreasonable in light of the Law Society’s statutory powers ― in fact, it is entirely consistent with the Law Society’s duty to establish and enforce educational standards.
38. It must be borne in mind that the suspension at issue in this case is not a disciplinary action. The educational standards in respect of CPD, as defined by the Rules, do not relate solely to the competence of lawyers. While they may improve the currency of a lawyer’s knowledge, these standards also protect the public interest by enhancing the integrity and professional responsibility of lawyers, and by promoting public confidence in the profession (r. 2-81.1(1)). A reasonable member of the public would understand that a temporary suspension for failing to complete CPD hours is not akin to a more serious disciplinary suspension. A lawyer’s competence in handling a case, to give one example, is not affected by a failure to comply with the CPD requirements.
39. That is why a failure to comply with the impugned rules is not on its own a ground for a finding of misconduct or incompetence. This is evidenced by the Rules themselves ― the CEO can refer a failure to comply with r. 2-81.1(8) (which requires members to complete one hour of CPD activities per month) to the Law Society’s complaints investigation committee, but only if the member in question has been suspended under that rule more than once (r. 2-81.1(13)).
40. Moreover, a suspension under the impugned rules is reported and recorded differently than other Law Society suspensions. The Law Society is not required in such a case to give the same notice of a suspension to the public and the profession as it must give where a suspension is imposed by the complaints investigation committee (r. 5-81(2)). Nor is a suspension under the impugned rules recorded in a lawyer’s discipline record.
41. The suspension of a lawyer for failing to complete the CPD requirements is administrative in nature. The impugned rules reasonably include no right to a hearing or right of appeal because lawyers are solely in control of complying with the rules in question at their leisure. Members report on their own compliance with the impugned rules ― no adjudication is needed in order to determine whether a member has failed to meet the requirements. A suspension under the impugned rules ends immediately when the member comes into compliance with them. There is no residual punishment or fine other than a reinstatement fee. Thus, this suspension is similar to the one that may be imposed on a member for failing to pay fees (s. 19(5), rr. 2-88 and 2-91) or failing to file an annual trust account report (r. 5-47(10)). In both cases, the Act and the Rules reasonably grant no right to a hearing or right of appeal because only the member can end the suspension by complying with the requirements.
42. It must be remembered that Mr. Green has admitted his disinterest in complying with a mandatory CPD program. Thus, even if the Rules did provide for more extensive procedures before a suspension could be imposed, such additional procedures would not exempt a person in Mr. Green’s position from the CPD program.
43. Further, the rules permitting a suspension are not self-applying. In addition to a lawyer’s common law procedural rights, the impugned rules expressly vest the CEO of the Law Society with discretion to ensure that the effect of the Rules in any given situation is not overly harsh. A suspension is not automatically imposed when a lawyer fails to complete the necessary hours. Rather, the CEO “may” send a letter to a member advising that he or she must comply with the CPD requirements. If a letter is sent, the lawyer has 60 days to comply with the Rules. The Rules also do not prevent the CEO from withdrawing a letter during this 60-day period if circumstances justify such a withdrawal.
44. In this case, the CEO exercised his discretion: rather than sending a letter immediately upon learning of Mr. Green’s non-compliance, he waited a full year after Mr. Green had first failed to comply with the requirements before sending the letter. In doing so, the CEO effectively waived the application of the impugned rules to Mr. Green for the first year they were in force.
45. Although the impugned rules could have included more extensive procedures, there is no magic formula for making rules with respect to CPD. The different provincial law societies have implemented CPD programs in different ways. This Court’s role is not to rewrite the Rules so as to include every procedural protection imaginable, but to determine whether the impugned rules are reasonable in light of the Act. The approach set out by Lord Russell C.J. in *Kruse v. Johnson*, [1898] 2 Q.B. 91 (Div. Ct.), which McLachlin C.J. endorsed in *Catalyst Paper*, at para. 21, is applicable in the instant case:

. . . I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, “Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.” But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. [Emphasis added; pp. 99-100.]

1. While it remains true that a rule is unreasonable if it involves “such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men”, the rules at issue do not come close to this. A lawyer’s failure to comply with the impugned educational rules, even after having been warned and given an opportunity to seek an extension, provides clear justification for the Law Society to impose a temporary suspension. These rules are not “‘irrelevant’, ‘extraneous’ or ‘completely unrelated’ to the statutory purpose” of the Law Society in any way: *Katz*, at para. 28.
2. Therefore, I cannot accept Mr. Green’s procedural arguments. Given the Law Society’s statutory mandate, it was entirely reasonable for it to make the impugned rules that vest its CEO with the discretion to impose an administrative suspension without a right to a hearing or a right of appeal.
3. Disposition
4. I would dismiss the appeal with costs throughout to The Law Society of Manitoba.

 The reasons of Abella and Côté  JJ. were delivered by

1. Abella J. (dissenting) — The possible sanctions for a lawyer in Manitoba who is found guilty of professional misconduct or incompetence range from a reprimand or fine to a suspension or disbarment. On the other hand, if a lawyer fails to complete 12 mandatory hours of Continuing Professional Development activities in a calendar year, he or she is automatically suspended.
2. I accept that The Law Society of Manitoba has the authority to require that its members take 12 hours of mandatory Continuing Professional Development courses. I also accept that the Law Society has, theoretically, the authority to suspend members who fail to comply with these requirements. But neither of these issues is at the heart of this case.
3. The real issue is the reasonableness of the Law Society’s rule that members who do not comply with those requirements are *automatically* suspended. This, in my respectful view, is inconsistent with the Law Society’s mandate to protect the public’s confidence in the legal profession because it gratuitously — and therefore unreasonably — impairs public confidence in the lawyer.

Analysis

1. A suspension is, in the panoply of a Law Society’s disciplinary sanctions, one of the two most serious. The ultimate sanction is disbarment. When a lawyer is suspended, so is public confidence in him or her. That is why The Law Society of Manitoba takes such care in its investigation of complaints regarding professional misconduct or incompetence — it helps ensure that a suspension is imposed only after at least some minimal procedural protections have been provided, and then only after a range of lesser penalties has been considered.
2. When a suspension is the result of such a process, the loss of public confidence is warranted. Where, however, a suspension is imposed automatically for the least serious disciplinary breach possible — failing to attend classes — the Law Society is in breach of its duty to protect the public from the needless erosion of trust in the professionalism of lawyers.
3. Automatically imposing one of the most serious possible sanctions, brings automatic public opprobrium for the least serious professional misconduct possible. This squanders public trust for no justifiable reason. A sanction for failing to attend? Perhaps. But not a suspension in every case regardless of the reasons for non-compliance.
4. Law Societies have rules and sanctions to maintain and enforce the professionalism of their members, but a Law Society cannot enact *any* rule. It can only enact rules that are consistent with the purposes, scope, and objectives of its enabling statute (Donald J. M. Brown and John M. Evans, with the assistance of David Fairlie, *Judicial Review of Administrative Action in Canada* (loose-leaf), at topic 15:3261).
5. In *Catalyst Paper Corp. v. North Cowichan (District)*,[2012] 1 S.C.R. 5,McLachlin C.J. explained that any such authority must be exercised “in a reasonable manner” (para. 15).This was echoed in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, [2013] 3 S.C.R. 810, where this Court, at para. 24, citing *Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266 (B.C.S.C.), at p. 292, confirmed that delegated legislation must be consistent with the purposes and objectives of its enabling legislation “read as a whole”.
6. I accept that *Katz* suggests a deferential approach when reviewing impugned delegated legislation, but the list of adjectives set out in para. 28 does not represent an exhaustive template. As stated in *Catalyst Paper*, at para. 21, there are other grounds for finding delegated legislation to be unreasonable, such as those set out in *Kruse v. Johnson,* [1898] 2 Q.B. 91 (Div. Ct.), at p. 99, where Lord Russell said:

. . . I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. . . .  If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were *manifestly unjust. . . .* [Emphasis added.]

The Court confirmed this in *Catalyst Paper* when it said, “[t]he fact that wide deference is owed . . . does not mean that [the delegate has] *carte* *blanche*” (para. 24). It is the mandate “as a whole” that governs the inquiry.

1. That general mandate, as this Court said in *Law Society of New Brunswick v. Ryan*,[2003] 1 S.C.R. 247, is to protect “the interests of the public” (para. 36). (See also *Law Society of British Columbia v. Mangat*,[2001] 3 S.C.R. 113, at para. 41.) In Manitoba, the Law Society’s purpose is to “uphold and protect the public interest in the delivery of legal services with competence, integrity and independence”.[[2]](#footnote-2) Those are the core values of a lawyer’s professionalism. Protecting the public interest necessarily involves not only ensuring that a lawyer delivers legal services in accordance with those core values, but also protecting the public’s *perception* in the professionalism of the delivery. The professional delivery must not only be done, it must be seen to be done.
2. Law Societies therefore represent — and are dedicated to protecting — the core values of the profession. They also represent — and are dedicated to protecting — the public’s confidence that those values will guide the lawyers who serve them. While the primary goal of the Law Society is the protection of the public interest, it cannot do so without also protecting the ability of its members to practise law professionally. As Estey J. stated in *Canada (Attorney General) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307:

The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. [p. 336]

(See also Gavin MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline* (5th ed. 2009), at p. 27-2.)

1. A Law Society must, as a result, exercise its mandate in a way that not only protects the ability of lawyers to act professionally, but that also reinforces the public’s perception that lawyers are *behaving* professionally. The flip side is that a Law Society cannot enact rules which unreasonably undermine public confidence in lawyers.
2. Yet that is exactly what happens when a lawyer in Manitoba does not comply with the 12 hour educational requirements.
3. The Continuing Professional Development requirements, defined as “learning activities that protect the public interest by enhancing the *competence*, integrity and professional responsibility of lawyers”,[[3]](#footnote-3) were designed to enhance the competence of lawyers under s. 3(2)(a) of Manitoba’s *Legal Profession Act*, C.C.S.M., c. L107 (“Act”), which states:

**3(2)** In pursuing its purpose, the society must

(a) establish standards for the education, professional responsibility and *competence* of persons practising or seeking the right to practise law in Manitoba; . . .

1. When the chief executive officer learns that a lawyer has not completed the required 12 hours, he sends a letter informing him or her that there are 60 days to complete them. The letter is sent automatically[[4]](#footnote-4) and without requesting or receiving representations from the defaulting lawyer. The failure to complete the requirements results in that lawyer being suspended from practising law.[[5]](#footnote-5)
2. The chief executive officer has only such powers as are given to him or her by or under the Act or the *Rules of the Law Society of Manitoba* (“Rules”).[[6]](#footnote-6) Other than granting more time to fulfill the Continuing Professional Development requirements, the chief executive officer has no discretion under rule 2-81.1(12) to do anything except automatically suspend the lawyer:

*A member who fails to comply within 60 days is automatically suspended from practising law until such time as the requirements have been met and a reinstatement fee paid.*

1. There are no exceptions or exemptions available to any lawyer who, for health or personal reasons for example, is unable to comply with the requirements. At most, the chief executive officer has discretion to permit a “carry over” of hours in “exceptional circumstances”.[[7]](#footnote-7) He cannot waive or change them. That means, in reality, an automatic suspension regardless of whether there was a compelling reason for failing to comply. Not even the barest of procedural fairness is authorized, such as the ability to explain. And everyone, regardless of circumstances, is subjected to an identical sanction.
2. The absence of discretion, procedural fairness, or remedial options is in stark contrast to other provisions in the Act or the Rules furthering the Law Society’s mandate under s. 3(2) of the Act to establish standards for the competence of lawyers. Unlike the automatic suspension which attaches to breaches of the 12 annual hours of “learning activities”, the following procedural protections apply to all other “competency” breaches: a lawyer who is being investigated is entitled to be notified of a complaint made against him or her;[[8]](#footnote-8) there is an opportunity for a written response;[[9]](#footnote-9) and the chief executive officer can informally resolve the complaint.[[10]](#footnote-10) The chief executive officer can also decide to take no further action, or can referthe matter to the Complaints Investigation Committee for further investigation.[[11]](#footnote-11)
3. If the matter is before the Complaints Investigation Committee, a member can be invited to respond in writing to the substance of the complaint[[12]](#footnote-12) or appear before the committee.[[13]](#footnote-13) The committee may decide to take no further action, or send a letter reminding the member of his or her obligations, or make recommendations to improve a member’s practice, or issue a formal caution.[[14]](#footnote-14) The committee may also direct that a charge be laid against the member and refer the matter to the Discipline Committee,[[15]](#footnote-15) with a suspension imposed pending completion of the investigation and any disciplinary proceedings that may follow.[[16]](#footnote-16) If a decision is made to suspend a member at this stage, the member has the right to appeal the decision to a judge of the Court of Queen’s Bench under s. 75(1) of the Act.
4. If the competence-related matter is referred to the Discipline Committee, the member is entitled to be represented by counsel.[[17]](#footnote-17) The range of consequences for a lawyer found to be incompetent by the Discipline Committee, is found in s. 72(2) of the Act:

(a) if the member is a lawyer, disbar the member and order his or her name to be struck off the rolls;

. . .

(c) confirm, vary or impose restrictions on the member’s practice *or suspend the member from practising law*, until the member satisfies the panel that he or she is competent to practise law;

(d) order the member to pay a fine;

(e) order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found incompetent;

(f) reprimand the member;

(g) permit the member to resign his or her membership and order his or her name to be struck off the rolls;

(h) if the member is a director, officer or shareholder of a law corporation, revoke or suspend the corporation’s permit, or impose conditions on the permit;

(i) order the member to take instruction or submit to examinations, or both, as the panel considers appropriate;

(j) rescind or vary any order made or action taken under this subsection;

(k) make any other order or take any other action the panel thinks is appropriate in the circumstances.

If a decision is made to punish a member for incompetence as set out in s. 72(2), including a suspension, the member is entitled to appeal to the Court of Appeal.[[18]](#footnote-18)

1. There is only one “competence” issue regulated by the Law Society that has *no* procedural protections, no range of remedies, and no discretionary leeway on the part of the chief executive officer: failure to comply with Continuing Professional Development requirements. It is as close to a victimless breach as it is possible to imagine, yet it is the only breach that attracts the automatic loss of the ability to practise law. It alone attracts automatic suspension, regardless of justificatory circumstances. This makes it arbitrary.
2. It is worth contrasting this with the regulations, policies and by-laws of most other Canadian provinces and territories that have Continuing Professional Development related rules. All of these expressly offer discretion to their respective regulatory bodies to deal with breaches of Continuing Professional Development requirements where there is a reasonable and justifiable explanation of why an exemption or a waiver would be required. These law societies explicitly grant their members the possibility of either exemptions or waivers from mandatory Continuing Professional Development requirements.
3. In New Brunswick, an exemption can be requested and, if denied, a hearing can be sought.[[19]](#footnote-19) In Ontario, the Law Society can exempt a lawyer from mandatory Continuing Professional Development, or reduce the number of hours.[[20]](#footnote-20) The Executive Director of Nova Scotia’s Barristers’ Society can waive the requirements if the waiver is “in the public interest”.[[21]](#footnote-21) In British Columbia, if there are “special circumstances”, a lawyer can apply to the Practice Standards Committee which can, in its discretion, order that the lawyer not be suspended.[[22]](#footnote-22) In Saskatchewan, an exemption can be granted by the Director of Education “in exceptional circumstances”.[[23]](#footnote-23) Quebec’s regulations and policy with respect to exemptions specify which exceptional circumstances will allow a member to be “exempted”, and which will not. [[24]](#footnote-24) Thelist of permissible exemptions includeparental leave; medical reasons, such as accidents; having to act as a caregiver; being in a disaster zone or a war zone and not being able to attend training activities. Non-permitted exemptions include a gradual return to work following a work stoppage for medical reasons; part-time work; a precarious financial situation; an intensive work period; being outside of Quebec for professional or personal reasons; not actively practicing the legal profession; not being obligated to contribute to the professional insurance; being unemployed; taking a year off; and holidays. In the Yukon, the Chair of the Continuing Legal Education Committee “may order that . . . the member not be suspended”.[[25]](#footnote-25)
4. No such discretion is available in Manitoba. This lack of discretion is, in my respectful view, fatal.It is also why judicial review of the chief executive officer’s decision is not available. The only remedy is to challenge the reasonableness of the Rule itself. The benchers may, at some point in the future, decide to change the Rule by giving the chief executive officer discretion, but at the moment, no such discretion has been delegated to him.
5. The Law Society argued that the Continuing Professional Development-related suspension is administrative, not punitive, and therefore does not reflect incompetence.It does not provide comforting attenuation of the severity of the penalty to say it was not for “serious” incompetence or misconduct. A suspension is a suspension is a suspension. As Lord Denning noted in *Pett v. Greyhound Racing Assn., Ltd.*,[1968] 2 All E.R. 545 (C.A. Civ. Div.), a decision to suspend someone, or not renew a licence to practice a profession, “concerns his [or her] reputation and his [or her] livelihood” (p. 549). (See also *Joplin v. Chief Constable of the City of Vancouver* (1982), 144 D.L.R. (3d) 285 (B.C.S.C.), at pp. 298-99*.*) That is why Dickson J. in *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, held that “[a] high standard of justice is required when the right to continue in one’s profession or employment is at stake” (p. 1113).
6. Public confidence in a lawyer’s professionalism is inevitably undermined when it learns that a lawyer has been suspended. The reason for the suspension does not magically transform a punitive consequence into an administrative one. The economic costs of the suspension are manifest. So are the reputational ones, especially since the Rules require the chief executive officer to notify every member of the Law Society and each of the chief justices of the courts in Manitoba of the name of a member who is suspended.[[26]](#footnote-26)
7. While enhancing lawyers’ competence is essential, so is upholding the Law Society’s responsibility to protect the ability of lawyers to practise their profession with the public’s confidence, or, at least, not to attract its unwarranted loss. But a Rule that leads to an *automatic* suspension for failing to attend 12 annual hours of classes, is so far removed from ensuring the public’s confidence in lawyers, that it is “manifestly unjust”. It is, as a result, unreasonable (*Kruse*, at pp. 99-100).
8. Because rule 2-81(12) unjustifiably undermines public confidence in a lawyer, it is inconsistent with the Law Society’s duty to protect the public interest. It is undeniably in the public interest to sanction lawyers for breaches of professionalism; it is in no one’s interest to sanction them arbitrarily.
9. I would allow the appeal and set aside the Rule.

 *Appeal dismissed with costs,* Abella *and* Côté JJ. *dissenting.*

 Solicitors for the appellant: Taylor McCaffrey, Winnipeg.

 Solicitors for the respondent: Law Society of Manitoba, Winnipeg; Gowling WLG (Canada), Ottawa.

 Solicitors for the intervener: McCarthy Tétrault, Toronto.

1. The benchers are a body of elected members and appointed persons who govern the Law Society: *The Legal Profession Act*, C.C.S.M., c. L107, ss. 4(1) and 5. [↑](#footnote-ref-1)
2. Section 3(1) of *The* *Legal Profession Act*, C.C.S.M., c. L107. [↑](#footnote-ref-2)
3. Rule 2-81.1(1) of the *Rules of the Law Society of Manitoba*. [↑](#footnote-ref-3)
4. Affidavit of Joan Holmstrom, the Law Society’s Director of Education, sworn November 7, 2014, A.R., vol. II, at pp. 59-60. [↑](#footnote-ref-4)
5. Rule 2-81.1(12). [↑](#footnote-ref-5)
6. Section 12(2) of the Act: “The chief executive officer has the powers and duties given to him or her by or under this Act and the rules, and those assigned or delegated to him or her by the benchers, the president or the vice-president.” [↑](#footnote-ref-6)
7. Rules 2-81.1(9) and 2-81.1(6). [↑](#footnote-ref-7)
8. Rule 5-64(2). [↑](#footnote-ref-8)
9. Rule 5-64(3). [↑](#footnote-ref-9)
10. Rule 5-65(1). [↑](#footnote-ref-10)
11. Rule 5-66. [↑](#footnote-ref-11)
12. Rule 5-72(1). [↑](#footnote-ref-12)
13. Rule 5-72(4). [↑](#footnote-ref-13)
14. Rule 5-74(1). [↑](#footnote-ref-14)
15. Section 68(b) of the Act. [↑](#footnote-ref-15)
16. Section 68(b)(i) of the Act. [↑](#footnote-ref-16)
17. Rule 5-96(2). [↑](#footnote-ref-17)
18. Section 76(1)(a)(i) of the Act. [↑](#footnote-ref-18)
19. See the Law Society of New Brunswick’s *Rules on Mandatory Continuing Professional Development*, ss. 7(1) to (3) and 8(1) and (2). [↑](#footnote-ref-19)
20. See the Law Society of Upper Canada’s *By-Law 6.1* — *Continuing Professional Development*, s. 2(4). [↑](#footnote-ref-20)
21. See Nova Scotia Barristers’ Society’s *Regulations*, r. 8.3.9. [↑](#footnote-ref-21)
22. See British Columbia’s *Law Society Rules* *2015*, rr. 3-29(1) and (5) and 3-32. [↑](#footnote-ref-22)
23. See the Law Society of Saskatchewan’s *Continuing Professional Development Policy* (online), dealing with “exemptions” and sections 16, 18 and 19. [↑](#footnote-ref-23)
24. See Barreau du Québec’s *Règlement sur la formation continue obligatoire des avocats*, CQLR, c. B-1, r. 12, ss. 15 to 17, and *Guide sur les dispenses de l’obligation de formation continue* (online), at p. 10. [↑](#footnote-ref-24)
25. See the *Rules of the Law Society of Yukon*, r. 95.3(5). [↑](#footnote-ref-25)
26. Rule 2-97. [↑](#footnote-ref-26)