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Tab 6

Federation of Law Societies of Canada

**Report on the Annual Conference and Council Meeting
St. John's, Newfoundland, October 16-19, 2019**

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Issue

The Federation of Law Societies of Canada (the “Federation”) is the national coordinating body for Canada’s 14 law societies. The Federation engages in a number of national initiatives through various committees and other groups that report to its annual and semi-annual meetings. The Federation operates the National Committee on Accreditation (“NCA”). This Standing Committee assesses the legal education and professional experience of persons whose training was obtained outside of Canadian common law jurisdictions and who wish to be admitted to a common law bar in Canada. In addition, the Federation provides administrative support to the National Criminal Law Program and the National Family Law Program.

More information about the Federation can be found on its website at www.flsc.ca/.

Background

The Federation typically meets twice a year (spring and fall) to conduct its business meetings for Council members, presidents and law society management and staff. This includes a meeting of law society CEOs and presidents in a joint forum. At the fall meeting, the Federation also holds a conference on a topic of interest to the legal regulators. At the October 2019 meetings, prior to the conference, a one-day planning session was held with respect to development of the Federation strategic plan for 2020-23.

Treasurer Malcolm Mercer, Federation President and former bencher Ross Earnshaw, Council member and former bencher Michelle Haigh, CEO Diana Miles, Lesley Cameron, Cara-Marie O’Hagan and Jim Varro attended the St. John’s meetings held from October 16 to 19, 2019. This report provides highlights of the meetings.

Information on the Meetings

A. Conference Program

This year’s conference was titled “The Practice of Well-being: Exploring the Legal Regulator’s Role.” The conference focussed on well-being as a continuous process in which legal professionals strive to succeed in all dimensions of life: occupational, intellectual, spiritual, emotional, social and physical. Participants heard from Canadian and international experts about the scope of the well-being problem among legal professionals and the implications for legal regulators. The presenters discussed the consequences of well-being challenges including the effects of stigma on members, the possible harm to the public and the impact on law society staff. The conference concluded with a discussion among law society representatives on tools law societies can use to address well-being, where the gaps exist and the steps law societies can take to address them.



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B. Council Meeting

The Council met on October 19, 2019. It dealt with certain decision items, received reports from the Federation's President and the Federation's CEO and addressed a range of Federation matters. The following provides a summary of the major reports for decision and information.

Appointments and the Election of Executive Officers

Between meetings of Council, oversight of the Federation is delegated to an Executive Committee consisting of the President, the Vice-President and President-Elect, and a second Vice President. Members of the Executive serve for a one year term and are selected on the basis of a pre-established rotation from all regions of Canada.

The following were elected as executive officers for the annual term beginning November 15, 2019:

- Morgan C. Cooper (Newfoundland and Labrador), President
- Stephen G. Raby Q.C. (Alberta), Vice-President and President Elect
- Nicolas Plourde (Barreau du Quebec), 2nd Vice-President
- Ross F. Earnshaw (Ontario), Past President
- Nathalie Ghuman, Director, Finance and Administration (Federation Office)

Three council positions were also filled. With the end of the terms of Herman Van Ommen (Law Society of British Columbia) and Michelle Haigh (Law Society of Ontario), Pinder Cheema, Q.C. and Jacqueline Horvat respectively were elected as directors. Carsten Jensen, Q.C. from the Law Society of Alberta was also elected a director given Stephen Raby's appointment as Vice-President and President Elect.

Reports on Strategic Priorities - Report of the Anti-Money Laundering and Terrorist Financing Working Group¹

The co-chairs of the working group updated Council on the activities of the Working Group, including the status of implementation of the Model Rule amendments approved by Council approximately one year ago. Six law societies have now approved the amendments² and most of those jurisdictions will implement the rules effective January 1, 2020.

A sub-group of the AMLTF Working Group is considering a number of issues that were raised during the consultation on the initial amendments, issues that have arisen as law societies implement the amendments and issues arising from recent amendments to the federal AMLTF

¹ LSO representative: Jim Varro, Co-Chair

² British Columbia, Alberta, Manitoba, Northwest Territories, Newfoundland and Labrador and Nova Scotia.



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regulations. Any additional amendments resulting from this review will be the subject of a future consultation.

Beyond the Guidance published by the Federation as a companion to the amended Model Rules, a second sub-group is working on the development of additional educational materials that will be made available to the law societies and the profession. The subgroup is focused on preparing materials addressing high risk situations. It is expected that additional materials will be available to the law societies before the end of the year.

The joint Federation – Government of Canada Anti-Money Laundering Working Group established last spring, co-chaired by Frederica Wilson and Lynn Hemmings of the Department of Finance, has now met once and will meet again in early December 2019. The first meeting was intended as an initial information-sharing session and included a presentation from representatives of FINTRAC on money laundering typologies, a discussion of the amendments to the Federation's Model Rules and a discussion of two recent reports on money laundering in British Columbia. The next meeting will continue the focus on information-sharing. The agenda will include an overview of the law societies' audit functions.

Reports on Strategic Priorities - NCA Assessment Modernization Committee Information Update³

Council was updated on the work of the Committee arising from the recommendations of the program review report of 2017. This report called for the development of competency-based benchmarks for admission/licensing and entry to practice and a competency-based assessment system for National Committee on Accreditation (NCA) candidates.

According to the Committee's work plan, the first step is to conduct a comprehensive analysis of the gaps between NCA candidates and graduates of Canadian law school programs in the law society bar admissions/licensing programs. A Request for Proposals to identify an appropriate consultant to assist with the gap analysis was issued early in 2019. A consultant was engaged to complete the gap analysis and commenced work in April 2019. The consultant prepared a detailed work plan for the gap analysis and is currently implementing it. Interviews and a survey have taken place and data analysis was prepared for a workshop arranged for October 2019.

Reports on Strategic Priorities - Information Update from the Truth and Reconciliation Commission Calls to Action Advisory Committee⁴

Chair Karen Wilford gave a status report on the work of the Committee. As recommended at the June 2019 Council meeting by the Federation's Executive Committee, the Committee continues to reflect on whether the Federation's work in response to the Truth and Reconciliation Commission

³ LSO Representative: Ross Earnshaw, Chair

⁴ LSO representative: Dianne Corbiere, Committee member



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(“TRC”) Calls to Action⁵ is achieving the agreed-upon strategic objectives. To facilitate this reflection, the Executive has reviewed the mandate and work of the Committee and has also been looking into related work by other committees. The Executive’s review is ongoing.

Prior to June, the Committee was continuing with its engagement with the Council of Canadian Law Deans (CCLD) on whether the National Requirement (the standard that all graduates of Canadian law schools must meet) should be amended to include cultural competency training and education on the history and legacy of residential schools, the UN Declaration on the Rights of Indigenous Peoples and other aspects of Aboriginal rights and Indigenous law as recommended in Call to Action 28. These discussions touched on the appropriate role for the Federation or law societies with respect to a response to Call to Action 28, and how any requirement(s) relating to this Call to Action should be mirrored in requirements for legal professionals as they relate to Call to Action 27

With respect to a response to Call to Action 27, the Committee recommended the creation of a working group comprised of law society representatives with expertise in developing Indigenous initiatives to assist the Committee. This recommendation was submitted to Council for consideration at its June 2019 meeting, but was deferred to permit time to reflect on how best to move forward in developing responses to the Calls to Action.

The Executive will be continuing its review of the Federation’s TRC-related work and expects to be in a position to make a more complete report at Council’s December 2019 meeting.

Amendments to the Model Code of Professional Conduct

Council approved amendments to the Model Code that address issues relating to technological competence.⁶ The amendments were recommended by the Standing Committee on the Model Code of Professional Conduct as a result of input from stakeholders on this issue. Two new paragraphs of commentary have been added to Rule 3.2-1 on Competence as follows:

⁵ Calls to Action 27 and 28 read :

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

⁶ Ontario abstained from the vote to approve the amendments, given its own technology initiative through the Technology Task Force and that it would be premature to vote on such amendments.



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[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- a) The lawyer's or law firm's practice areas;
- b) The geographic locations of the lawyer's or firm's practice; and
- c) The requirements of clients.

The amendments will now be forwarded to law societies for implementation.

2018-2019 Annual Report of the National Committee on Accreditation (NCA)⁷

As noted earlier, the NCA, a standing committee of the Federation, is responsible for the program for the assessment of the legal training and professional experience of internationally trained lawyers and students and graduates of Canadian civil law programs who wish to enter the bar admission/licensing program in any of the Canadian common law jurisdictions.

In 2018-2019, 1052 Certificates of Qualification were issued to internationally-trained law graduates and lawyers, a 14% increase from the previous year. The NCA is the single largest source of candidates for entry into the licensing programs of Canadian law societies.

In 2018-2019, over 2,400 applications for assessment were received, a 28% increase from 2017-2018.

In recent years the vast majority of the applicants from England, Australia and the United States appear to be Canadians who have gone abroad to get their law degree. The number of applicants educated in India again increased by approximately 50% while the number of Nigerian educated applicants almost doubled. Virtually all applicants educated in these countries have immigrated or will immigrate to Canada.

In 2018-2019, over 7,200 examinations were written in four sessions in the months of August, October, January, and April. The NCA holds examinations in cities across Canada and in New Delhi, India each session. Applicants may request to write in other cities both in Canada and overseas.

⁷ LSO representative: Malcolm Mercer, Committee member



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The operations of the NCA are funded entirely by its users through the payment of assessment, examination and other fees, with the annual budget designed on a breakeven basis. At the end of 2018-2019 the NCA assessment fee was \$350, 30% less than in 2009, and the fee to write an exam was \$300, 40% less than in 2009. The NCA has been able to lower the fees over time due to efficiencies in operations and increasing numbers of applications.

The NCA and staff continue to focus on implementing the recommendations of the NCA Program Review, noted earlier in this report, to further the goal of ensuring that NCA Certificate holders are prepared for success in bar admissions/licensing processes and practice.

2018-2019 Annual Report of the Canadian Common Law Program Approval Committee⁸

The Canadian Common Law Program Approval Committee (the "Approval Committee") determines law school program compliance with the National Requirement⁹ for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. The Approval Committee evaluates both the programs of established Canadian law schools and those of new Canadian law schools.

The information on the Federation website on Canadian programs has been revised and enhanced to reflect the 20 law schools with approved programs and the three programs that have received preliminary approval (Nunavut Arctic College with the University of Saskatchewan, Ryerson University and Trinity Western University).

Based on law schools' reporting on learning resources over the past five years,

- total annual enrolment in J.D. programs for all Canadian law schools has grown from approximately 3,600 to 3,916;
- the total number of tenured faculty members at Canadian law schools has increased slightly from approximately 700 to approximately 735; and
- all schools employ contract and/or sessional lecturers with numbers varying from as low as four to well over 200.

The Approval Committee tracks changes to enrolment, professoriate, budgets, etc. on an individual law school basis annually to determine if there are changes that may indicate concerns in resourcing. The situation in the past year appeared to be largely stable with eleven law faculties reporting budgetary increases. The Committee will continue to track learning resources as part of its mandate of evaluating legal education in Canada.

The Committee will meet in person in mid-January to discuss its Strategic Priorities for 2020.

⁸ LSO representative: Ross Earnshaw, Committee member

⁹The National Requirement, implemented in 2015, specifies the competencies and skills graduates must have attained and the academic program and learning resources law schools must have in place. Programs are reviewed annually by the Approval Committee.



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Governance Tools and Reports

Council received a report from the Federation's CEO, Jonathan Herman, on

- the status of the 2019-2020 Activity Plan annotated to indicate the status of completion of the tasks set for the Federation since the Strategic Plan 2017-2023 was adopted by Council at its June 2017 meeting;
- a report on the Federation's overall compliance with the Governance Policies; and
- a draft planning calendar for Council meetings over the next year, in accordance with the Governance Policies.

Report of the Audit and Finance Committee

Council approved the draft audited financial statements of the Federation for the financial year ending June 30, 2019.

Committee Chair Stephen Raby also provided an information report on

- the operating statements for both the Federation's general fund and the National Committee on Accreditation for the financial year ended June 30, 2019;
- the status of the Special Projects Reserve Fund;
- budget plans for the 2020-2021 financial year; and
- the CanLII budget for 2020.¹⁰

In looking ahead to the 2020-2021 budget, the Committee acknowledged the need to provide law societies the opportunity to understand the Federation's budget when they go through their respective budgeting processes. To allow adequate time for law societies to consider the Committee's budget recommendations, a draft budget will be presented at the December Council meeting, a full six months before the beginning of the financial year.

Update on the CLE Program Review¹¹

Council received an update on the work of the CLE Program Review. At this stage, the Advisory Group undertaking the review continues to work toward an acceptable governance and administration framework for the CLE Programs. A new draft was approved by the Advisory Group and was circulated to the program Co-Chairs for further feedback. In mid-September 2019,

¹⁰ With respect to CANLII, its current report to Council includes its 2020 fee recommendation and draft 2020 budget (CanLII's fiscal year is the calendar year end). The fee recommendation is a slight increase on a dollar basis and status quo on an FTE basis. The Committee had no issues with the budget. The Committee is deferring its recommendations for approval of the fee and the 2020 budget until the December 2019 Council meeting to give law societies sufficient time to review the report and the proposed fee for 2020.

¹¹ LSO Representative: Ross Earnshaw, Advisory Group member



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feedback was received from the Co-Chairs to the revised framework and it appears that positive progress has been made toward a mutually acceptable understanding of how the arrangements should work in the future. A number of outstanding issues remain to be considered, however, including matters that relate to the composition of a future CLE Program Committee.

The Advisory Group was scheduled to meet at the end of October to consider next steps which it is hoped will result in final recommendations to Council for the December 2019 meeting.

CanLII Report

CanLII Board Chair Dominic Jaar and CanLII President and CEO Xavier Beauchamp-Tremblay presented a report that included the 2020 CanLII fee recommendation¹², the 2020 budget, CanLII's financial situation and an overview of CanLII's activities since CanLII's last report to the Federation. The Council also received a brief report from Ivan Mokanov, CEO of Lexum¹³, which was acquired by CanLII in 2018. Mr. Mokanov discussed the positive growth of the company and its successful efforts to attract new customers, including several in the United States. Lexum will begin a new strategic planning cycle in 2020 for the 2021 year.

Report on the National Criminal Law CLE Program

The 2018 National Criminal Law Program ("NCLP") was held July 8 to 13, 2019 in Ottawa, the 46th consecutive edition of the NCLP. The subject matter of the 2019 program was substantive criminal law. The Program attracted over 600 registrants, two guest lecturers and 43 faculty. The program included lectures on new offence provisions that came into effect post-2015 (including the new cannabis laws), fundamental principles on principal and party liability for offending, criminal organization offences, drug importation and trafficking, human trafficking, driving offences, trial delay, child luring, child pornography and offences involving intimate images, fraud, terrorism and crimes against the administration of justice. Two of the break-out sessions were offered in French.

Consent Agenda Reports for Decision and Information

The Federation Council received a number of information reports from various committees and one report for decision in a consent agenda. Highlights of those reports on subjects that have not otherwise been discussed above are provided below.

¹² The recommended fee is unchanged from the 2019 fee, as follows:

\$41.94 (all but Barreau du Quebec and Chambre des notaires du Quebec)

\$28.05 (Barreau)

\$16.77 (Chambre)

The total fees would be \$3,847,188 according to the most recent projected law societies' FTE totals, a 2.3% increase compared to last year's budget.

¹³ Lexum is a software company that designs and operates online legal information delivery products. It specializes in the management and the publishing of legal information over the internet and provides CanLII with the design, development and operation of the publishing platform and activities of the CanLII website.



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- Public Affairs and Government Relations Committee¹⁴

In June 2019, Federation President Ross Earnshaw sent a letter drafted by the Committee responding to the invitation from Anne McLellan to the Federation to comment on whether the roles of federal Minister of Justice and Attorney General of Canada should be split. The Federation's letter provided high level information and context for the review and did not express a position or recommendation. Ms. McLellan's report, released August 14, 2019, recommended against splitting the roles.

In August 2019, the Committee prepared preliminary, high-level, submissions to Immigration, Refugees and Citizenship Canada (IRCC) in response to the new *College of Immigration and Citizenship Consultants Act* and amendments to the *Immigration and Refugee Protection Act* and *Citizenship Act*. The legislative changes create new regulation-making powers that could have implications for law societies' self-regulatory authority and protections for solicitor-client privilege. IRCC advised Federation staff that there will be additional opportunities to make submissions following the federal election.

- Standing Committee on the Model Code of Professional Conduct¹⁵

The Standing Committee currently has two active working groups. The first is examining possible Rules and Commentary to reinforce the ethical obligations which apply when counsel communicates *ex parte* with a Court or Tribunal. The Committee is working towards drafting proposals for release in a planned January 2020 consultation package. The second working group is examining Rules 3.4-27 to 3.4-41 of the Model Code (doing business with clients). The Standing Committee does not expect to propose changes to these rules in the planned January 2020 package.

The Standing Committee is considering recommendations from the Law Societies Equity Network (LSEN) to strengthen Model Code Rule 6.3 (harassment and discrimination). The Standing Committee will be considering the issues raised by the LSEN in stages. It intends to prepare recommendations addressing a first series of issues for inclusion in the planned January 2020 consultation package.

- Standing Committee on the National Discipline Standards¹⁶

Council approved the Standing Committee's recommendation to modify Standard 2 (timeliness for responding to written complaints) at its June 2019 meeting. This change is to be implemented by

¹⁴ LSO representative: Michelle Haigh, Committee member

¹⁵ LSO representatives: Jacqueline Horvat and Cara-Marie O'Hagan, Committee members

¹⁶ LSO representative: Lesley Cameron, Committee member



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law societies on Jan 1, 2020. An updated version of the Standards, and revised Implementation Guide that captures these changes, will be circulated to law societies before the end of 2019. Members have agreed to defer further consideration of changes to Standard 20 (law society directory with status information) pending the work of a newly established working group of the Discipline Administrator's Steering Committee (DASC) that is responsible for considering the type of discipline information that can be shared among law societies. The working group aims to complete its work by December 2019.

- Law Societies Access to Legal Services Exchange/National Action Committee on Access to Civil and Family Justice Status Report

The Exchange Group is continuing its practice of holding quarterly meetings. At the last meeting on May 30, 2019, the group received an update on access to justice initiatives in Manitoba and the National Action Committee on Access to Justice in Civil and Family Matters' Annual Summit in Montreal April 10-12, 2019.

The National Action Committee on Access to Justice in Civil and Family Matters (NAC) held teleconferences on June 7 and September 9, 2019 continuing discussions from the Annual Summit in April. Topics included enhancing reporting efforts of NAC to funders (i.e. BC and Ontario Law Foundations, the Federation and judicial organizations), the proposal to hold regional conferences across Canada on access to justice in 2020, and the process for determining membership for the NAC's Steering Committee (10-15 members including representatives of the judiciary, governments, legal aid, legal profession, legal regulators, academia, NGOs, etc.). It appears the Federation will likely maintain a role on the Steering Committee.

- Composition of the National Committee on Accreditation (NCA)

Council approved the appointment of Adam Dodek to the National Committee on Accreditation for the term of three years. Dean Dodek replaces Dean William Flanagan, who left his decanal post this past summer and resigned from the NCA.