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Tab 4

Federation of Law Societies of Canada

Report on the Federation Meetings, March 2 – 3, 2020

May 28, 2020

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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 from which reports are received at its Council meetings. The Federation also operates the National Committee on Accreditation (“NCA”), a Standing Committee at the Federation whose primary mandate is to assess the legal education and professional experience of persons whose education and experience were obtained outside of Canadian common law jurisdictions and who wish to be licensed to practice law in Canada.

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 business and other meetings for Council members, presidents and law society management. These include a Joint Forum for the law societies’ Presidents and CEOs (Federation Council members also attend), and a separate meeting of law societies’ CEOs in the CEOs’ Forum. At the fall meeting, the Federation holds a conference on a topic of interest to the legal regulators.

Council member Jacqueline Horvat, CEO Diana Miles, Cara-Marie O’Hagan and Jim Varro attended the Montreal meetings held from March 2 to 3, 2020.

Information on the Council Meeting

The Council met on March 3, 2020. 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 information and decision.

Strategic Briefing: Model Code of Professional Conduct

The Model Code of Professional Conduct was adopted by the Federation more than a decade ago and has been implemented by almost all Canadian law societies. With the original goal of the Model Code project - harmonization of the ethical rules across the country - largely achieved, Council reflected on the best way to ensure that the Model Code remains current and responsive to changes in legal ethics. The discussion touched on ways to improve the ongoing work, including consultation cycles, issues with implementation at law societies and opportunities for greater input from law societies on proposals.



Report of the Anti-Money Laundering and Terrorist Financing Working Group¹

The Working Group continues to review the model anti-money laundering rules and develop additional educational materials to assist members of the profession in recognizing potential money laundering risks.

A consultation on possible amendments to the Cash Transactions and Client Identification and Verification Model Rules is expected to be launched later this year. The Working Group recently released two new educational products: five risk advisories for members of the legal professions were shared with the law societies at the end of December 2019 and a compendium of risk assessment scenarios was distributed in early February 2020.

The joint Federation-Government of Canada Working Group on Money Laundering and Terrorist Financing met on December 2, 2019 and is scheduled to meet again in 2020 on a date to be set. The Working Group includes officials of the departments of Finance and Justice, the RCMP, FINTRAC, the Canada Border Services Agency and the Federation.

NCA Assessment Modernization Committee Information Update²

The National Committee on Accreditation (NCA) is responsible for assessing the credentials of internationally trained lawyers and graduates. The Federation is undertaking a comprehensive review of the mandate, structure, policies and activities of the NCA through the NCA Assessment Modernization Committee (the Committee).³

¹ LSO representative: Jim Varro, Co-Chair

² LSO Representatives: Malcolm Mercer and Priya Bhatia, Committee members

³ The NCA Program Review report released in May 2017 included 28 recommendations in seven areas including communications, assessment, data collection and governance. Among them was a recommendation calling for the development of competency-based benchmarks for bar admissions/licensing and entry to legal practice and a competency-based assessment system for NCA applicants. In March 2018, following earlier agreement that a committee should be established to develop recommendations for a competency-based assessment system for NCA applicants, Council approved the creation of the Modernization Committee.



Based on its work plan, the Committee undertook a comprehensive analysis of the gaps between NCA candidates and graduates of Canadian law school programs in the law society bar admissions/licensing programs. The gap analysis is to be followed by the creation of an entry to licensing competency profile.

Council was informed that the gap analysis report was completed and was presented to the Joint Presidents' and CEOs' Forum in March 2020 for information. The Committee will meet in spring 2020 to determine next steps for the development of competencies.

Information Update from the Truth and Reconciliation Commission Calls to Action Advisory Committee⁴

The Advisory Committee is tasked with developing recommendations on Calls to Action 27 and 28 of the report of the Truth and Reconciliation Commission as a first priority.

With respect to **Call to Action 28** (education of law students in relation to Aboriginal peoples and the law), between 2018 and 2019 the Federation engaged the Canadian Council of Law Deans ("CCLD") on the idea of amending the National Requirement to include Call to Action 28. Preliminary feedback from the CCLD, and discussions among Council, the Executive and Advisory Committee members over the fall and winter 2019, suggested that focussing on collaborative opportunities between law societies and the legal academy would be more productive than pursuing an amendment. The Executive is in discussions with the Chair of the CCLD on future collaboration.

With respect to **Call to Action 27**, the next steps discussed were recommendations for a working group on this issue primarily from law societies who are advanced on the issue. Since that meeting in May 2019, the Advisory Committee took time to reflect more deeply on its mandate and re-emphasize its role in addressing the Calls to Action as one of the Federation's three key priorities.

The Advisory Committee met in person on February 24, 2020 in Ottawa, and agreed on a path forward for the Committee's work with some high level recommendations and guiding approaches. A report from this meeting is being prepared for the June 2020 Council meeting.

⁴ LSO representative: Dianne Corbiere, Committee member



CLE Program Review Report

Council approved a framework for the governance and administration of the National Criminal Law Program and the National Family Law Program (collectively, the CLE Programs), which the Federation will continue to operate and deliver. The Chair of the CLE Program Review Advisory Group, Sheila MacPherson, reported that the framework includes specific guiding principles set out in the Advisory Group's report to Council that apply to the Federation's continued association with the CLE Programs. The framework, among other things, provides that:

- ultimate responsibility for the CLE Programs rests with the Federation Council;
- accountability to Council for the CLE Programs is achieved through the establishment of a CLE Program Committee; and
- overall oversight of the financial and administrative aspects of the CLE Programs is the responsibility of the Federation CEO.

2019-2020 Activity Plan Update

Council received an update on the status of the Activity Plan, including details on the strategic objectives and the strategies to support the work on the objectives, and timeframes within which matters are to be completed and reported. The 2020-2021 Activity Plan will be provided for approval at the June 2020 Council meeting in conjunction with the completion of the 2020-2024 Strategic Plan.⁵

International Engagement Plan for 2020-2021

Council approved the Federation's International Engagement Plan for 2020-2021. Approval of the Plan is required each year pursuant to the Federation's Governance Policies.

The Federation's international activity is characterized primarily by maintaining its membership in a number of international organizations that bring together regulators and representative bodies of the legal profession from around the world, and by ensuring a Federation presence and participation at key meetings or conventions each year. Reports on these activities are provided after each activity.

⁵ Council also received a presentation of the draft 2020-2024 Strategic Plan based on input from law societies in previous strategic thinking sessions during Federation meetings and the March 2020 meetings. The goal is finalize the plan and present it for approval at the June 2020 Council meeting.



The coming year's plan involves attending the ABA Annual Conference, IILACE Annual Conference, Opening of the Legal Year (UK), International Conference of Legal Regulators, the IBA Annual Conference and the IBA Bar Leaders' Conference.

2020-2021 Budget - Report of the Finance and Audit Committee⁶

Council approved the 2020-2021 Federation Budget of \$2.9 million⁷, a levy increase of \$11,000 compared to the current year's budget, subject to the law societies' approval of the levy set out in the 2020-2021 Federation Budget. Council also approved the 2020-2021 National Committee on Accreditation (NCA) Budget of \$4.9 million. This budget is balanced but forecasts significant increases in assessments and exams.

Council also approved the allocation of the Federation's reserves for 2020-2021 in accordance with the Federation's Reserve and Investment Policy.⁸

The Committee reports that there are no significant anomalies to report in the General Fund based on the second quarter financial results of the Federation. Projections in the NCA Fund take account of significant increases in demand for services.

CanLII Semi-Annual Report

CEO Xavier Beauchamp-Tremblay presented the Canadian Legal Information Institute (CanLII) report on its activities. The report included CanLII Board statements on performance against its Strategic Plan, non-financial material developments affecting CanLII operations and material

⁶ LSO representative: Teresa Donnelly, Committee member

⁷ The LSO contributes approximately \$ 1.16 million or 39.83% of the levy, based on 40,834 FTEs (full time equivalent licensees).

⁸ In accordance with the Policy, the General Contingency Reserve shall be determined each year in an amount as determined by Council to be approximately equivalent to one sixth of the total amount of expenses incurred in the General Fund, not including fees paid to CanLII and amortization, during the previous financial year.



CanLII activities falling outside the Strategic Plan, and the statement of Board satisfaction with the President. Year-end CanLII statistics were also included.

The report reflected that 2019 was again an excellent year for CanLII, with activities directly in line with the new strategic plan for CanLII approved by Council at its December 9, 2019 meeting.

Consent Agenda Reports for Decision and Information

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

National Committee on Accreditation (NCA)⁹

The NCA received approximately 1,900 applications for assessment in the first seven months of 2019/2020. This is 38% higher than the number of applications received in during this period in 2018/2019. Approximately 2,517 exams were written in the NCA's January 2020 exam session at 28 sites both in Canada and around the world.

At its June 2019 meeting, Federation Council approved new Terms of Reference for the NCA. The new committee composition specified in the Terms of Reference was recently implemented with the addition of an expert on foreign credential recognition. The Committee also reported that implementation of a number of the NCA Program Review's operational recommendations has begun.

Canadian Common Law Program Approval Committee

There are currently 20 law schools with approved programs, and three (Nunavut Arctic College with the University of Saskatchewan, Ryerson University and Trinity Western University) with preliminary approval. All 2019 decisions have been completed and evaluations have been issued.

⁹ LSO representative: Malcolm Mercer, Committee member



Public Affairs and Government Relations Committee¹⁰

In August 2019, this 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 legislation creates new regulation-making powers that could have implications for law societies' authority over self-regulation and protections for solicitor-client privilege. IRCC has advised Federation staff that it is working on the new regulations and that there will be additional opportunities to provide feedback and make submissions on the regulations.

The Committee continues to monitor new proposed legislation that falls within the Federation's mandate and that may impact member law societies.

Standing Committee on the Model Code of Professional Conduct¹¹

The Standing Committee released a Consultation Package on January 29, 2020 that includes proposed changes to Rule 6.3 (discrimination and harassment) and proposed new rules and commentary regarding ex parte communications and proceedings. The consultation period will close on September 30, 2020.

The Standing Committee approved a letter from Chair David Swayze to the Canadian Judicial Council responding to an invitation to comment on the draft updated Ethical Principles for Judges released in November 2019. The letter, sent to the CJC on February 5, 2020 provided feedback on those parts of the draft updated Ethical Principles for Judges addressing post-judicial return to practice.

¹⁰ LSO representative: Jacqueline Horvat, Committee member

¹¹ LSO representatives: Jacqueline Horvat and Cara-Marie O'Hagan, Committee members



Standing Committee on the National Discipline Standards¹²

The Committee's Peer Review Pilot Project has a two year mandate that will conclude on May 31, 2020, at which time the plot Working Group will compile the responses and draft a final report with recommendations for next steps.

The Standing Committee has approved the Adjudicator Toolkit Subcommittee's preliminary workplan to align the identification and development of hearing tools and resources with the National Adjudication Training Curriculum. This project is aimed at developing a practical tool for assisting law societies with their hearing processes.

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

At its last meeting in December 2019, the group reviewed a new template for the access to justice inventory, and received an update on access to justice initiatives with the National Action Committee on Access to Justice in Civil and Family Matters (NAC).

At the NAC's Steering Committee meeting in January 2020, attended by Jill Perry attended as the Federation's representative, topics included the NAC's mandate and organizational structure, updates on regional access to justice colloquia planned for 2020 and the Annual Summit (April 29-May 1, 2020), and the status of funding requests (i.e. law foundations, federal government and the Federation).

¹² LSO representative: Helena Jankovic, Committee member