

Background

Convocation Approval of Federation Task Report on the Canadian Common Law Degree (February 2010) and Federation Implementation Committee Report (October 2011)

1. In recent years, in large part because of the development of the Federation of Law Societies of Canada (“the Federation”) Mobility Agreements, as well as the Canadian Agreement on Internal Trade, law societies have recognized the increasing importance of developing national standards in key areas of regulation. These enable them to be assured that regardless of from which jurisdiction a lawyer transfers he or she will have met similar regulatory requirements. This enhances public protection across the country.
2. Over the last decade, for example, law societies have been developing national standards through the auspices of the Federation to address disciplinary issues, a model code of conduct, harmonization of foreign legal consultant regimes, national competency standards, and in 2009 and 2011 a national requirement for the Canadian common law degree.

Task Force on the Canadian Common Law Degree

3. The Federation established the Task Force on the Canadian Common Law Degree in June 2007 (“the Federation Task Force”) to “review the criteria in place establishing the approved LL.B/ J.D. law degree for the purposes of entrance to law societies’ bar admission/ licensing programs and, if appropriate, to recommend changes.” The Federation Task Force submitted its final report (“the final report”) to Federation Council in October 2009. The report is set out at **TAB 3.2.1.1: Federation Task Force Final Report.**

4. The final report recommended that,
 - a. law societies in common law jurisdictions adopt a uniform national requirement for entry to their bar admission programs;
 - b. the National Committee on Accreditation (“NCA”) apply this national requirement in assessing the credentials of applicants educated outside Canada; and
 - c. the national requirement be applied in considering applications for new Canadian law schools.
5. The final report detailed the basis for the national requirement necessary for an “approved law degree,” outlining the qualifying academic program and the necessary learning resources with which graduates seeking entry to licensing programs must have complied.
6. It also provided for the establishment of a process to determine how the national requirement would be implemented.
7. On February 25, 2010, Convocation approved the Federation final report. See **TAB 3.2.1.2: Report to Convocation 2010.**

Implementation Committee Report

8. To address implementation of the national requirement, the Federation established a Committee, made up of five law society representatives and three law school representatives, who were current or former Law Deans, to develop a proposal to implement the national requirement. That Committee submitted its final report to the Federation Council in August 2011. The report is set out at **TAB 3.2.1.3: Implementation Committee Report.**
9. The Implementation Committee Report contained 20 recommendations, including the establishment of an Approval Committee with the following mandate:
 - To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply

to the programs of established Canadian law schools and those of new Canadian law schools.

- To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.
 - To make any changes, revisions or additions to the draft reporting timeline in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.
 - To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.
 - To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.
 - To ensure appropriate training for its members.
 - To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.
10. On October 27, 2011, Convocation approved the Implementation Committee's report. See **TAB 3.2.1.4: Report to Convocation 2011**.
11. In accordance with the processes Convocation approved in February 2010 respecting the national requirement and in October 2011 respecting the approval of law school academic requirements, the Approval Committee has determined that Trinity Western University should receive conditional approval for its proposed law school program based on the national requirement.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

TASK FORCE ON THE CANADIAN COMMON LAW DEGREE

FINAL REPORT

October 2009

The Task Force presents this report and recommendations for consideration and discussion. The report and recommendations have not been endorsed by the governing body of the Federation and do not represent the official position of the Federation or its member law societies.

EXECUTIVE SUMMARY

The provincial and territorial law societies of Canada have the statutory responsibility to regulate the legal profession in the public interest. This responsibility includes the task of admitting lawyers to the profession. In all common law provinces and territories there are three requirements for admission to the bar: a Canadian law degree or its equivalent, successful completion of a bar admission or licensing program and completion of an apprenticeship known as articling. For applicants who receive their legal training outside Canada the determination of what constitutes qualifications “equivalent to” a Canadian law degree is made by the National Committee on Accreditation (“NCA”), a committee of the Federation of Law Societies of Canada (“the Federation”).

Unlike other common law jurisdictions, Canada has never had a national standard for academic requirements of a Canadian law degree. The closest *de facto* standard has been a set of requirements the Law Society of Upper Canada approved in 1957 and revised in 1969. These have not been reviewed in 40 years and in any event have never been explicitly accepted by other law societies.

The regulatory landscape has changed greatly since 1969. Public scrutiny of regulated professions has increased. Recent events have converged to focus particular attention on the need for transparent regulatory processes and on the implications of government initiatives to harmonize regulatory requirements across the country:

- Three provinces have enacted legislation respecting access to regulated professions that require regulators to ensure that admission processes for domestic and internationally trained applicants are transparent, objective, impartial and fair.
- The number of internationally trained applicants for entry to bar admission programs has greatly increased and the requirement for equivalency has created a need to articulate what law societies regard as the essential features of a lawyer's academic preparation.
- New law schools are being proposed for the first time in more than 25 years and recognition of their degrees as meeting the academic requirements for entry to bar admission programs requires a more explicit statement of what is required.
- Federal and provincial governments have made clear their commitment to national labour mobility and harmonized standards. A 2007 Canadian Competition Bureau (“CCB”) Study on regulated professions questioned the rationale behind the different admissions requirements of various law societies. Recent amendments to the Agreement on Internal Trade (“AIT”) have made it clear that all levels of government view professions as national entities that must have the same admission standards. Anyone certified for an occupation by a regulator in one province or territory must be recognized to practise that occupation in all other provinces and territories. The legal profession has had national mobility for a number of years, beginning with the negotiation of the

National Mobility Agreement in 2002. A national academic requirement would further enhance national mobility by providing a common, transparent method for entry to any of the common law bar admission programs in Canada.

The Federation appointed this Task Force in June 2007 to review the existing academic requirements for entry to bar admission programs and to recommend any modifications that might be necessary.

The Task Force's recommendations follow this Executive Summary. The Task Force recommends that the Federation adopt a national academic requirement for entry to the bar admission programs of the common law jurisdictions. The intent behind developing a requirement that applies equally to applicants educated in Canada and internationally is to ensure that all those seeking to enter bar admission programs in Canadian common law jurisdictions have demonstrated certain essential and predefined competencies in the academic portion of their legal education.

In developing the recommended content of this national requirement the Task Force has had the benefit of input from the legal academy, the profession and other interested parties. In particular, the Council of Canadian Law Deans has been of considerable assistance as the Task Force has addressed the difficult challenge of creating a national requirement while at the same time preserving the flexibility Canadian law schools require to continue the innovation in legal education that positions graduates for valuable and diverse roles in society.

Accrediting bodies in jurisdictions similar to Canada commonly use one of two approaches to determine that an applicant for admission meets the necessary academic requirements: successful completion of specified courses or passage of a substantive law bar examination. In recent years, however, there has been increasing focus on learning outcomes, rather than prescriptive input requirements. The Task Force is of the view that this focus represents the appropriate regulatory approach.

Accordingly, the Task Force proposes a national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education.

The skills competencies the Task Force recommends are in problem solving, legal research and oral and written communication skills. These skills are fundamental to any work a lawyer undertakes in the profession.

In general the Task Force recommends that the Federation leave it to law schools to determine how their graduates accomplish the required competencies. It has concluded, however, that the Federation should require applicants seeking entry to bar admission programs to demonstrate that they have had specific instruction in ethics and professionalism, in a stand-alone course dedicated to the subject. Ethics and professionalism lie at the core of the legal profession. It is important that students begin to appreciate this early in their legal education.

In determining the required substantive legal knowledge, the Task Force considered the continued relevance of the current first-year curriculum of the 16 law schools offering a common law degree, the importance of students having foundational knowledge in both public and private law, the competency research undertaken by various law societies in Canada, the regulatory approach in other comparable common law jurisdictions and the importance of ensuring that the requirements do not interfere with the flexibility and innovation in current law school education.

The Task Force's recommendations reflect its view that every Canadian law school graduate entering a bar admission program or a recipient of an NCA Certificate of Qualification should understand,

- the foundations of law, including principles of common law and equity, the process of statutory construction and analysis and the administration of the law in Canada;
- the constitutional law of Canada that frames the legal system; and
- the principles of criminal, contract, tort, property and Canadian administrative law and legal and fiduciary principles in commercial relationships.

In addition to the competencies set out in the national requirement the Task Force recommends that law schools meet certain institutional requirements, as follows:

- The prerequisite for entry to law school must at a minimum include successful completion of two years of postsecondary education at a recognized university or CEGEP, subject to special circumstances.
- The law school's program for the study of law must consist of three academic years or its equivalent in course credits.
- The program of study must consist primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
- The law school must be adequately resourced to meet its objectives.
- The law school must have appropriate numbers of qualified academic staff to meet the needs of the academic program.
- The law school must have adequate physical resources for both faculty and students to permit effective student learning.
- The law school must have adequate information and communication technology to support its academic program.
- The law school must maintain a law library in electronic and/or paper form that permits it to foster and attain its teaching, learning and research objectives.

The national requirement will be applied to all applicants for entry to bar admission programs whether educated in Canada or internationally.

Where a Canadian law school offers an academic and professional legal education that meets the national requirement, its graduates will have met the requirements for entry to bar admission programs.

For applicants trained outside Canada the Task Force recommends that the NCA continue to assess them individually. The national requirement will provide appropriate guidance and result in NCA applicants being assessed in a manner consistent with the requirements for graduates from Canadian law schools.

The Task Force also recommends that the Federation apply the national requirement when considering proposals for new Canadian law schools.

The Task Force recommends that Canadian law school compliance with the national requirement, including the competencies, be determined by a standardized annual report. Each law school Dean will complete the report confirming that the law school has conformed to the academic program and learning resources requirements and explaining how the program of study ensures that each graduate of the law school has met the competency requirements.

If the law societies of Canada approve these recommendations, the Task Force recommends that the Federation establish a committee to implement them.

The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking to enter a bar admission program must meet the national requirement. This transition period accommodates students who have already begun their studies, applicants currently in the NCA process and law schools that will require modifications to their programs.

The proposed national requirements and the Task Force's more detailed discussion of the issues follow this Executive Summary.

THE TASK FORCE'S RECOMMENDATIONS

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

A. Statement of Standard

1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;*
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and*
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.*

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or*

- b. *possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.*

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

1.2 Legal Research

The applicant must have demonstrated the ability to,

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

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- a. communicate clearly in the English or French language;*

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

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;*
- b. the ability to identify and address ethical dilemmas in a legal context;*
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*
 - i. circumstances that give rise to ethical problems;*
 - ii. the fiduciary nature of the lawyer's relationship with the client;*
 - iii. conflicts of interest;*
 - iv. duties to the administration of justice;*
 - v. duties relating to confidentiality and disclosure;*
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.*

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of

the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships.*

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic

and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. Academic Program:

- 1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*
- 1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.*
- 1.3 Holders of the degree have met the competency requirements.*
- 1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.*
- 1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*

2. Learning Resources:

- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*
- 2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.*
- 2.3 The law school has adequate information and communication technology to support its academic program.*
- 2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*

- 5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the*

Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.

6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.

THE REPORT

INTRODUCTION

The legal profession in Canada is self-regulating. Provincial and territorial legislation has for decades and in some cases centuries granted law societies responsibility to admit applicants to the profession, establish codes of professional conduct and standards of competence, and discipline lawyers when they fall below acceptable standards.

Law societies regulate lawyers “in the public interest.” In the 21st century self-regulation is neither a static concept, nor one that can or should be taken for granted. The context within which the legal profession operates has changed significantly since the days when the members of the profession were homogeneous in make-up and relatively few in number, the profession’s monopoly was not challenged and consumer awareness had not become an important factor in the provision of legal services. Today, regulators must pay attention to the internal and external pressures on self-regulation that will affect its future operation.

The legal profession in Canada remains virtually the last in the common law world to be self-regulating.¹ Across Canada regulators are under greater government scrutiny than ever before. The heightened scrutiny is not directed specifically at the legal profession, but to all professions as governments determine their own public interest priorities and consider ways to create a more seamless pan-Canadian approach to governance.

Governments are increasingly responding to public demands for transparency, fairness, objectivity and consistency in decision making whether it be at the government level or by statutory authorities. The passage of fair access to professions legislation by three provincial governments, the 2008 national amendments to the Agreement on Internal

¹ The nature of self-regulation of the legal profession in Canada has evolved over a long period. It is now commonplace for law society benchers (directors) to include public representatives, often referred to as “lay benchers” who participate as full voting members. Nevertheless, in all provinces and territories the majority of benchers are lawyers that the profession elects to regulate lawyers in the public interest, independent of government control, to ensure that the public continues to be served by an independent bar.

Trade (“AIT”) with a commitment to full labour mobility across Canada by August 2009, and the recently undertaken provincial and territorial agreement to develop a pan-Canadian framework for foreign qualification recognition demonstrate the commitment to transparent and accessible process that governments have made and expect regulators to meet. Moreover, while regulators have been consulted on these developments, their influence has been limited to discussing details, not to influencing the policy direction underlying the initiatives.

Today and in the future, self-regulation requires regulators to anticipate areas of government and public scrutiny and changing societal priorities and ensure that their processes withstand that scrutiny. The Federation’s 2002 National Mobility Agreement (“the NMA”) is a good example of what can be achieved by changing the understanding of the public interest and developing policy to address it. Because of the NMA, law societies were already compliant with the amendments to the AIT.

The establishment of this Task Force to consider the development of a national requirement for the entry of applicants to provincial and territorial law society bar admission programs is in large part a response to the heightened government scrutiny of regulators. It also arises from a realization that there are areas of regulation in which law societies have done little recent policy work to reflect the changing regulatory landscape. In part this inactivity has been reflective of the historic isolation of law societies from one another. National regulatory projects were for decades quite limited.

Yet law societies in common law jurisdictions in Canada share the same values and responsibilities.² All law societies regulate their members in the public interest, which includes responsibility for the competence, integrity, standards of learning and professional ethics of those they admit to the profession and a commitment to access to legal services. Their codes of professional conduct reflect similar duties and responsibilities to the court, to clients and to the public. Every law society requires new lawyers to complete a pre-call program, including articling, prior to admission. Despite

² Law societies in common law jurisdictions also share many of these same values with the Barreau du Québec; however because of somewhat different legal systems, this Task Force’s mandate is to address requirements only as they apply to entry into the law societies of common law jurisdictions.

features that reflect their unique provincial or territorial circumstances all law societies regulate on the basis of these shared values, which render lawyers from common law jurisdictions more similar than not. Increasingly, law societies recognize the need to address the shared nature of their responsibilities in formal ways to ensure that the profession keeps ahead of a constantly changing landscape and regulation continues to reflect the public interest.

The enhancement of the Federation's role and the advent of national mobility have engendered greater interaction and cooperation across the country. There are now good reasons to reflect a national perspective whenever possible and to articulate it in a transparent, fair and objective manner.

In June 2007 the Federation appointed this Task Force with a mandate to review the criteria currently in place establishing the approved LL.B/ J.D. law degree for the purposes of entry to law societies' bar admission/ licensing programs and, if appropriate, to recommend changes. The mandate includes considering the implications of any changes for the National Committee on Accreditation ("the NCA") requirements for granting a certificate of qualification to internationally educated applicants.

The Task Force has met over the last two and a half years, has provided three reports and has undertaken a consultation process. It reported on the results of the consultation process in March 2009 and has taken the comments it received both in writing and in meetings into account in reaching its recommendations. The information on its process is set out at **Appendix 1**.

This is the Task Force's final report, with its recommendations, which it presents to Federation Council for its consideration.

THE ROLE OF LAW SOCIETIES IN REGULATING ENTRY TO THE PROFESSION

Law societies in Canada are responsible for determining who is admitted to the profession. The responsibility is a significant one, because each decision to admit an

applicant tells the public that the newly licensed lawyer has met high standards of learning, competence and professional ethics. In the context of lawyer mobility and the AIT, the admission of a lawyer in one common law jurisdiction in Canada is effectively admission in every other common law jurisdiction.

Law societies in the common law provinces carry out their responsibility by requiring candidates for admission to earn a Canadian common law degree or its equivalent, to successfully complete a law society bar admission program³ and to complete a period of apprenticeship, known as articling. Currently, the successful attainment of a Canadian common law degree⁴ satisfies the regulators' academic requirement. The bar admission and articling stages provide practical training for the practice of law.

To assess the qualifications of persons who receive their legal training outside Canada, the Federation established the NCA. The NCA determines what additional requirements the applicant must meet to achieve equivalency with the Canadian LL.B./J.D. degree. When satisfied that equivalency has been achieved, the NCA issues a Certificate of Qualification that law societies generally use to determine whether an applicant meets the academic requirements for entry to a bar admission program.

The concept of an approved Canadian law degree developed in large part as a result of the debate in Ontario in the 1940's and 1950's over control of legal education. In 1957 the benchers of the Law Society of Upper Canada agreed that graduates "from an approved law course in an approved university in Ontario" would meet the academic requirements for entry to the bar admission course. This resulted in the relatively quick development of law schools at Queen's, Western, Ottawa and Windsor, the further development of the law faculty at the University of Toronto, and ultimately the relocation

³ The term "bar admission program" refers to and includes all the pre-licensing processes leading to admission to the profession in the common law provinces and territories.

⁴ In some provinces, the academic requirement is expressed simply as "a Canadian common law degree" (e.g. Law Society of Alberta - Rule 50.2; Law Society of British Columbia, Rule 2-27(4)(a): "successful completion for the requirements for a bachelor of laws or the equivalent degree from a common law faculty of law in a Canadian university"); in others, the degree must be from a "recognized school of law" (e.g. Saskatchewan – www.lawsociety.sk.ca/newlook/Programs/admission.htm) or from an "accredited law school" (e.g. Ontario - Law Society of Upper Canada By-Law 4, section 9.).

of the original Osgoode Hall Law School to a university setting at York University in 1969. The Law Society of Upper Canada subsequently expanded the scope of acceptable law programs to include law schools throughout Canada and, over the next two decades, proceeded to approve the law degrees of all 16 Canadian common law faculties for entry to its bar admission program. In 1984, Kenneth Jarvis, while Secretary of the Law Society of Upper Canada, described this process in a letter to the Federation, set out at **Appendix 2**.

The Law Society of Upper Canada's 1957/69 requirements defined an approved law faculty for the purpose of entry of their graduates to the bar admission course. The Law Society originally prescribed eleven mandatory courses that every student was required to take and a number of additional courses that the schools were required to offer. In 1969, as a result of a request by the Ontario Law Deans for greater flexibility in program development, the Law Society amended the standards, reducing the number of required courses from eleven to seven ("the 1957/69 requirements".) The 1957/69 requirements are set out at **Appendix 3**.

There has never been a national requirement for approval of law programs or law schools in Canada. For a half century no law societies in common law jurisdictions have analyzed the criteria governing entry of a graduate from a Canadian common law school to their bar admission programs. Moreover, neither the Law Society of Upper Canada nor any other law society appears to have updated the 1957/1969 requirements.

In 1976, 1979 and 1980 three new law schools opened their doors at Victoria, Calgary and Moncton. Because there was no national law program approval body, each provincial law society had to consider whether to recognize law degrees from these institutions as meeting the academic requirements for entry to their respective bar admission programs.

It is perhaps not surprising that law societies have never established national requirements for entry to their bar admission programs. Until recently law societies operated in relative isolation from one another, preoccupied with internal regulatory

issues. They spent little time developing national approaches despite their common responsibilities. Further, unlike the United States where there are hundreds of law schools, there are only 16 in Canada that grant common law degrees. There has not been a new school approved in 29 years. While the existing law faculties were established under differing circumstances and vary in their missions, objectives, size, access to resources and other features, law societies have been satisfied that they all provide quality programs. This remains the case today.

Law societies respect the academic freedom that law schools vigorously defend. There is a strong tradition within the legal education system, particularly in North America, to view law school education as not simply a forum for training individuals to become practitioners of a profession, but also as an intellectual pursuit that positions its graduates to play myriad roles in and make valuable contributions to society.

Why in the face of this respect for law schools' missions and the quality of law schools and their faculties would the Federation establish a national requirement that graduates of these law schools will be required to meet to enter bar admission programs? Why not assume that the status quo continues to be sufficient?

The regulatory landscape has changed greatly since law societies last addressed this issue in 1969. Public scrutiny has increased, with recent events converging to focus particular attention on the need for transparent processes and national regulatory requirements.

Fair Access Legislation and National Committee on Accreditation

Three provinces have enacted legislation respecting fair access to regulated professions that require regulatory authorities to ensure that their admission processes for domestic and internationally trained candidates are transparent, objective, impartial and fair.⁵ The legislation includes provisions for ongoing monitoring of regulators' compliance with the requirements. To the extent a regulator has delegated the

⁵ *Fair Access to Regulated Professions Act*, S.O. 2006, c.31 (Ontario); *The Fair Registration Practices in Regulated Professions Act*, S.M. 2002, c.21 (Manitoba); and *Fair Registration Practices Act*, S.N.S. 2008, .38 (Nova Scotia – to be proclaimed.)

assessment of international qualifications to a third party it must ensure that the third party complies with the requirements of the fair access legislation.

Law societies have delegated the responsibility for evaluation of international credentials to the NCA. It evaluates the credentials to determine the scope and extent of any further legal education that in its opinion an applicant must complete *to equal the standard of those who have earned a Canadian LL.B./ J.D. degree*. The difficulty with this test is that there is no articulated national standard or requirement for the Canadian LL.B./J.D. degree against which the NCA requirements can be measured.

Given the need to meet the fair access standards of transparency, objectivity, impartiality and fairness a national requirement is necessary for the regulation of entry to bar admission programs for both domestic and international candidates.

Proposals for New Canadian Law Faculties and Law Degree Granting Institutions

Until 2007 there had been no proposals for new faculties of law in Canada for over 25 years. Within established faculties of law there has been only a limited increase in the number of law school places. As the number of applicants to law schools has continued to increase, some unsuccessful applicants have attended law schools elsewhere in the world. Applicants who earn law degrees outside Canada and wish to return to Canada must go through the NCA process for an assessment of their credentials.

The increased number of law school applications has given rise to at least two developments. The first, as described above, is the increase and change in the nature of some of the candidates seeking evaluation through the NCA. To address the NCA requirements for these students some international law schools have begun tailoring their curriculum to teach Canadian law.

The second development is the renewed interest in Canada in the establishment of new law schools, either as part of a university or within a private, degree granting institution. The first proposals came from Ontario in 2007 from at least two universities, with a number of other universities expressing interest. The government of Ontario announced

in 2008 that it would not fund new schools at this time, but the issue has not receded. British Columbia recently approved the creation of a law school at Thompson Rivers University in partnership with the Faculty of Law at the University of Calgary. In addition, a private provincially approved degree granting institution in British Columbia has recently submitted an application for authority to offer a J.D. degree.⁶

New law schools will want to ensure that their graduates are eligible to enter bar admission programs in any common law jurisdiction in Canada. The adequacy and portability of their law degree for this purpose will be as essential to them and their students as it is to the already established law faculties. A clearly articulated national requirement is necessary to ensure that new Canadian law schools know what they must do to enable their graduates to enter bar admission programs.

National Mobility of Lawyers and Government Harmonization Initiatives

The legal profession in Canada has had open and transparent national mobility for a number of years, beginning with the negotiation of the NMA in August 2002.⁷ In addition, national labour mobility is now a clear governmental objective, both federally and provincially.

At the Council of the Federation meeting in July 2008 provincial and territorial premiers emphasized the critical importance of full labour mobility for all Canadians and the need to amend the AIT by January 2009. The premiers stated that the proposed amendments should provide that any worker certified for an occupation by a regulatory authority of one province or territory be recognized as qualified to practise that occupation in all other provinces and territories. The premiers directed that any exceptions to full labour mobility would have to be clearly identified and justified as necessary to achieve a “legitimate objective,” a term defined in the AIT. Governments would share their list and post these on a public website. Full labour mobility was to have been achieved by August 2009.

⁶ Learning Wise Inc. doing business as University Canada West.

⁷ Federation of Law Societies of Canada. National Mobility Agreement, August 16, 2002. www.flsc.ca/en/pdf/mobility_agreement_aug02.pdf

Despite provincial and territorial regulation of professions, the amendments to Chapter 7 of the AIT have made it clear that all levels of government view the professions as national entities that must have the same admission standards. Any differences in provincial approach must be harmonized to permit seamless mobility. Establishment of a national requirement for entry to bar admission programs is in keeping with this harmonized approach.

Canadian Competition Bureau (“CCB”)

In a 2007 study of a number of professions, the CCB pointed to a number of areas in which it believed the legal profession’s practices were restrictive. It noted, for example, variations in the length of bar admission and articling requirements across the country and could not see a justification for the differences. The CCB study is a further example of an external pressure for a national approach to professional regulation that is uniform, transparent and clear.

Law societies stand between law schools that seek autonomy to fulfill their academic objectives unimpeded and governments that seek accountability, transparency and consistency in the regulation of the profession. Law societies must seek a balance that addresses both these imperatives, always keeping the public interest in mind.

The development of regulatory requirements for entry to bar admission programs involves a balancing of considerations, because what regulators prescribe as a prerequisite for those seeking entry to bar admission programs will also *de facto* be part of the “exit” requirements for those graduating from law schools. Accordingly, the Task Force’s recommendations reflect its understanding of why requirements are necessary and what those requirements should be, while paying attention to the legitimate concerns of the legal academy that the requirements support quality, innovation and excellence in Canadian law schools.

This balancing is a complex process because while law societies and the legal academy have overlapping interests, they also have, in part, different priorities and requirements.

These include statutory obligations in the case of regulators, academic imperatives in the case of the schools and different external pressures on each group.

The Task Force's recommendations also address the transparency and fairness of NCA processes and provide guidance for proposals for new Canadian law schools.

INTERNATIONAL APPROACHES TO ENTRY INTO THE LEGAL PROFESSION

Each jurisdiction develops regulatory standards that suit its unique circumstances.

Appendix 4 provides a comparative international snapshot of a number of approaches to determining requirements to be met by candidates seeking to become lawyers. The Task Force has noted that many other jurisdictions are undergoing a re-examination of legal education and accreditation issues, in some cases making changes, in others commencing studies of possible models to pursue. As well, a number of Canadian law schools have made changes to their first year curricula, often raising issues similar to those the Task Force has discussed, sometimes from a different perspective.

The extent to which issues respecting appropriate approaches to legal education, standards and models for regulation are being actively considered illustrates the timeliness of the Task Force's work. A number of developments provide useful perspectives on a model that would best suit the Canadian legal education and regulatory context. In particular, the Task Force has noted the interplay of standards, outcome measurements and accreditation across a number of jurisdictions.

- In the United States the approved law school approach has tended to focus on the “bricks and mortar” features (input measures such as libraries, teaching staff, classroom space, etc.), rather than learning outcomes. The key output measures have traditionally been bar passage rates and job placement. In July 2008 an American Bar Association (“ABA”) Task Force on Outcome Measurements released its report in which it recommended what could amount to a sea change in accreditation approval processes. It recommended that current ABA Accreditation Standards be re-examined and reframed as needed “to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”⁸ The report pays particular attention to the

⁸ American Bar Association. Section of Legal Education and Admissions to the Bar. Report of the Outcome Measures Committee. (Professor Randy Hertz, Chair). July 27, 2008, p.1 (“Outcome Measures Report”).

extent to which other professions have developed outcome measurement standards, reflecting the importance of a professional education that facilitates graduates' ability to practise their profession.

- The Australian model of regulation is somewhat similar to the current Canadian approach, with no national accreditation system. Australia does, however, have national curriculum requirements (Priestley 11) and the Council of Australian Law Deans has recently agreed in principle on overall national standards that could ultimately become accreditation standards.⁹ These address a wide range of matters, including academic autonomy, the law course, assessment, academic staff, the law library or collection, resources and infrastructure, course evaluation, nexus between teaching and research, governance and administration and continuous renewal and improvement. The standards are articulated at a broad level, leaving a great deal of flexibility for individual schools.
- The England and Wales model combines input and output measures, as well as defining, through the Joint Statement on Qualifying Law Degrees of the Law Society of England and Wales and the General Council of the Bar, the conditions a law degree course must meet to be termed a “qualifying law degree.” The Law Society of England and Wales has recently revised requirements for its Legal Practice Course to describe learning outcomes for what a successful candidate should be able to *do* on conclusion of the course.

In considering what requirements graduates with Canadian LL.B./ J.D. degrees should have to meet to be eligible for entry to law society bar admission programs the Task Force has benefited from this comparative analysis and has fashioned an approach that reflects Canada's legal education and regulatory context.

DEVELOPING A CANADIAN NATIONAL REQUIREMENT FOR ENTRY TO BAR ADMISSION PROGRAMS

An examination of international approaches to entry to the legal profession reveals that Canada appears to be unique among comparable common law jurisdictions in not having national standards or requirements for the academic prerequisite for admission to the profession, beyond requiring an LL.B./J.D. degree. The final report of the Council of Australian Law Deans in describing international requirements accurately summarized the Canadian regulatory environment:

⁹ Council of Australian Law Deans. *Standards for Australian Law Schools-Final Report*. Prepared by Christopher Roper and the CALD Standing Committee on Standards and Accreditation. March 2008 (“the CALD Report 2008”).

There are no Canadian national standards as such. It has been many years since standards for Canadian law schools have been evaluated. The setting of standards for Canadian law schools, or more accurately the requirements for call to the bar, is a responsibility of individual Canadian law societies, as they set entry requirements for the respective provincial or territorial bar admission process.¹⁰

For the reasons discussed earlier in this report and in its previous reports, the Task Force is satisfied that there should be a national academic requirement for entry to bar admission programs of the common law jurisdictions. The intent behind developing a requirement that applies equally to applicants educated in Canada and internationally is to ensure that all those seeking entry to bar admission programs in Canadian common law jurisdictions have demonstrated certain essential and pre-defined competencies in the academic portion of the legal education or its equivalent through the NCA.

Such a requirement would address the issues identified earlier in this report respecting transparent regulation, fair access to regulated professions, criteria to be applied for new law school applications, AIT and CCB considerations and government scrutiny of regulators.

Anything short of a national solution that addresses these issues in a comprehensive way will result in the continuation of a patchwork approach that is neither in the public interest nor adequately attuned to the external forces that are affecting self-regulation.

For a national approach to succeed, provincial and territorial law societies must think nationally, as they did when adopting the NMA, the anti-money laundering rules and client-identification rules. Although a commitment to a national approach will on occasion require compromise, law societies have enormous capacity to work together in the interests of the profession. The Federation's increasing commitment to national regulatory approaches is also reflected in a new Task Force the Federation has recently established to develop national standards for admission to the profession. Like this Task Force's work on a national requirement for entry to bar admission programs, the goal of that Task Force is to enhance transparent regulation, reflecting the common responsibilities law societies share.

¹⁰CALD Report 2008, p. 38.

In developing its recommendations the Task Force has been very aware of the potential effect of a national requirement for entry to bar admission programs on law school education.

The Council of Canadian Law Deans (“the Council”) has provided the Task Force with important assistance both through the participation of its working group of three Law Deans and through its reports and correspondence to the Task Force, most recently its letters of June 1 and June 29, 2009, set out at **Appendices 5** and **6**. The Task Force is encouraged by the Council’s June 1, 2009 response to the general direction of the Task Force’s approach. The Task Force has found the Council’s perspective very helpful as it has finalized its recommendations.

Members of faculty at a number of law schools have also given the Task Force valuable insight into the pedagogical implications of the options it has been considering in the course of its work.

The Task Force believes that its recommendations balance law societies’ regulatory responsibilities with the importance of academic freedom and learning in law schools.

THE TASK FORCE’S RECOMMENDED APPROACH

Examination and Course Listings Options

Accrediting bodies in jurisdictions similar to Canada commonly use two approaches to determine that an applicant for admission meets the necessary academic requirements: passage of a bar examination, without requiring that applicants take certain courses in law school, or successful completion of specified courses.

The tradition in the United States has been to test a candidate’s academic qualifications in a state bar examination. The bar passage rate has been one of the main criteria the ABA accreditation process has examined in evaluating the success of law schools.

While there is no suggestion that the United States is moving away from state bar examinations, the limitations of the approach are being examined, particularly in terms

of their value in accrediting law schools. The American system is different from Canada's in that law school is the only preparation for practice – there are no articling or bar admission programs.

In its September 2008 consultation paper the Task Force considered the examination option and noted the following:

This option appears to be transparent and objective, easily developed nationally and entirely within the control of law societies. Potentially it may apply to both domestically and internationally educated candidates. For those who currently question whether students graduating from law schools are adequately prepared to practise law there may be comfort that an examination system serves as a check and balance.

The Task Force is of the view, however, that there are a number of issues that arise with this option that require consideration. Criticisms of the American examination model, for example, include the view that the examinations come to “drive” the legal education process. It has been suggested that what examination passage denotes primarily is the ability to pass an examination, rather than proof of the acquisition of the knowledge, skills and abilities that a lawyer requires to practise law.

Another possible disadvantage of this approach is that it adds another layer to law students' education.

During the consultation process some input suggested that this approach is preferable to an approved law degree requirement since law societies would not be “dictating” curriculum to law schools. Other input agreed with the Task Force concern that as students become preoccupied with ensuring that they pass this additional hurdle they will demand that their law schools teach to the examinations.

The Task Force believes there is a better approach than prescribing a national entrance examination to bar admission programs. The focus of this approach is on education rather than testing. With cooperation and collaboration between law societies and law schools the goals and mandates of both groups can be achieved, benefiting students and ultimately the public.

The Task Force also considered whether to specify a list of law school courses that a graduate must have taken to be eligible for entry to a bar admission program. In

England and Wales, Australia and New Zealand law societies specify a compulsory course curriculum. The latter two jurisdictions each publishes a general course syllabus of required courses.¹¹ The Law Society of Upper Canada's 1957/1969 requirements took a similar approach, specifying both required courses an applicant must have taken and optional courses that law schools were required to offer.

This approach reflects what until recently has been a focus on the topic areas a student's education must address, rather than on what the student has learned and can do. Increasingly, however, this traditional approach is being replaced by consideration of those competencies a student should have acquired that reflect the knowledge, skills and attitudes necessary for an applicant seeking admission to the legal profession. The course based approach offers little guidance on the candidate's capabilities. From the public's perspective what matters is what lawyers are able to do.

Competency Requirements

The Task Force is satisfied that law school graduates seeking entry to bar admission courses should have acquired competencies in fundamental areas of substantive knowledge, legal skills and professionalism and ethics. This is the preferred approach for a national requirement.

Establishing requirements in all three categories reflects their equal importance in the development of lawyers who are competent to serve the public. The Law Society of Upper Canada's 1957/69 requirements considered only substantive law, reflecting the priorities of all regulators and law schools at that time. In the latter decades of the 20th-century both law schools and law societies have also delivered skills education and training, with law schools being particularly qualified to offer such instruction in legal research and writing. Many schools offer clinical programs, skills-based courses and pro bono opportunities that enable students to develop the skills that will serve them following graduation.

¹¹ See Appendix 4.

Relationships between individuals, the state, and societal and commercial entities are at the heart of law. A lawyer's fundamental role is to understand those relationships, to identify the legal issues and problems that arise from them and to craft solutions. The lawyer's role may arise in traditional private practice while serving the needs of a client, as corporate counsel, in government or clinic practice, or in myriad other contexts. Every context and every issue requires the lawyer to bring to bear a wide range of skills, knowledge and ability. The lawyer's development is never static and must evolve, adapt and expand wherever the lawyer works and in the face of a constantly changing legal landscape.

To perform their roles lawyers must know the law, whether common law or statute. This does not mean that lawyers will always know all the law applicable to a particular problem or issue, but does mean they must understand the basic legal concepts that will be applicable and will guide them in finding the law that is specific to the problem or issue at hand.

It is not reasonable to expect that law schools will graduate students who are fully capable of providing competent professional services to clients in all matters. Clearly, the profession must continue to play a role in bridging the gap between law school and formal licensing of lawyers. However, through the professional legal education students receive in law school, they should acquire foundational competencies necessary for the practice of law.

In the past decade several law societies have developed competency frameworks to support their bar admission requirements. The most detailed is the Law Society of Upper Canada's entry-level competencies, developed for its licensing process after a lengthy consultation with the profession, focusing on the early years of practice.¹² The Law Society of Upper Canada highlights competencies in ethical and professional responsibility, knowledge of the law, client relations, and issue identification.

¹² Law Society of Upper Canada. Licensing Process. Entry Level Solicitor Competencies by Category; Entry Level Barrister Competencies by Category. www.lsuc.on.ca. (lawyer licensing)

The law societies of British Columbia, Alberta, Saskatchewan and Manitoba have taken a similar approach, identifying competencies in lawyering skills, practice and management skills, and ethics and professionalism that entry level lawyers require. British Columbia applies these competencies in its bar admission program, the Professional Legal Training Course.¹³ Alberta, Saskatchewan and Manitoba apply the competency framework in their common bar admission program through the Centre for Professional Legal Education (CPLED). Nova Scotia has adapted the framework for use in its bar admission course and New Brunswick will implement a similar competency framework in 2010.

In Australia admission to practice is governed by competency standards developed in 2000 by the Australasian Professional Legal Education Council (APLEC) and the Law Admissions Consultative Committee. These standards describe the performance required in three key areas: skills, practice areas and values (i.e. ethics and professional responsibility).

In the United States the University of Wisconsin Law School Assessment 2000 Report was one of the early detailed examinations considering a competency approach to education. It reviewed the skills and knowledge lawyers need in their first five years of practice.¹⁴ Most recently in 2008, the Legal Education Section of the ABA's Output Measures Committee has urged a reconsideration of that body's accreditation process in favour of an output-based process.¹⁵ In commenting on the Committee's interim report the Society of American Law Teachers noted,

In assessing whether law schools are providing students with quality legal education, the ABA should consider the wide range of competencies important to lawyers... the competencies that the ABA should evaluate are the skills, knowledge and values that are important to the profession and go far beyond what is currently valued and measured.¹⁶

¹³ Canadian Centre for Professional Legal Education 2004. *Competency Profile for Entry Level Lawyers*. Calgary, Alberta.

¹⁴ University of Wisconsin Law School. Assessment 2000 Summary Report. www.provost.wisc.edu/assessment/LawSchool2000_report.pdf

¹⁵ Outcome Measures Report. July 27, 2008.

¹⁶ Society of American Law Teachers Statements to the ABA Outcome Measures Committee, February 1, 2008, pp. 1, 5 and 6. See Also July 21, 2008.

In the Carnegie Foundation's report, *Educating Lawyers: Preparation for the Profession of Law* the authors consider the appropriate focus of academic preparation for the profession of law to be an integrated three part curriculum consisting of,

- (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth;
- (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and
- (3) a theoretical and practical emphasis on inculcation of the identity, values and dispositions consonant with the fundamental purposes of the legal profession.¹⁷

Skills Competencies

In recommending competencies in certain skills the Task Force has focused on those skills areas that law students can reasonably be expected to acquire during the academic component of their education. This is not to suggest that the legal academy should be expected to provide the only education in this area, rather that the three years of the academic program are an appropriate period in which to begin to inculcate these skills.

The Task Force has developed the recommended skills competencies with reference to both the competency work that individual law societies have done and the significant learning that is currently being undertaken in Canadian law schools in these areas.

The three skills areas that the Task Force's recommendations address are problem-solving, legal research, and oral and written legal communication. In its view these skills are fundamental to any work a lawyer undertakes in the profession. In describing these competencies the Task Force has kept in mind that a national requirement is to address what an applicant must demonstrate for entry to a bar admission program not for entry to the profession. Competency development is a progressive process with law school being the first step in career long learning.

¹⁷ William M. Sullivan, et al. *Educating Lawyers: Preparation for the Practice of Law*. Carnegie Foundation for the Teaching of Law. 2007, p.194.

The Task Force believes that all 16 Canadian common law schools currently provide sufficient instruction in these recommended skills areas to meet the competency requirements.

By articulating these skills requirements the Task Force believes that law societies would make an important statement that lawyers should not only know the law, but should to have the capacity and skill to use what they know and be able to serve the public.

Ethics and Professionalism

The Task Force has concluded that law societies should require applicants seeking entry to a bar admission program to demonstrate that they have had instruction in ethics and professionalism in the Canadian legal context. During the Task Force's consultation no one suggested that studying ethics and professionalism should not form a fundamental component of an individual's legal education. Rather, the debate has centred on whether the Task Force should recommend that applicants must have taken a stand-alone course in the subject.

In general the Task Force has concluded that it should be left to the law schools to determine how their students satisfy the competency requirements. It has not recommended that regulators specify courses, number of credit hours, content, delivery method, or assessment. This allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives, while at the same time meeting the regulators' requirements that will allow their graduates to enter bar admission programs.

The one exception to this recommended approach is ethics and professionalism. After careful consideration the Task Force recommends a stand-alone ethics and professionalism course for each student who seeks entry to a bar admission program.

The Law Society of Upper Canada's 1957/69 requirements said nothing about instruction in legal ethics or professional responsibility and as late as 1985, only two of the country's 16 law schools had a compulsory legal ethics course in their programs.

Approximately 18 years ago, the Federation and the Council of Canadian Law Deans jointly sponsored an important study by W. Brent Cotter, now Dean of the University of Saskatchewan College of Law, that emphasized the importance of professional responsibility instruction as a component of legal education and recommended a coordinated curriculum. This marked the opening of a national conversation that continues today.¹⁸

As an academic discipline, legal ethics has more recently become a significant area of scholarly pursuit. In an article written in 2007 entitled "Taking Responsibility: Mandatory Legal Ethics in Canadian Law Schools," authors Richard Devlin, Jocelyn Downie and Stephanie Lane begin by saying,

In an era when professionals, bar societies and judges are often heard lamenting the decline in legal professionalism, mandatory legal ethics and professional responsibility instruction in law schools would seem to be an obvious, and obviously appropriate, response.¹⁹

While the authors recognize institutional reluctance for any further mandatory courses to be added to the law school curriculum, they agree with the position that there is more evidence on the effectiveness of professional responsibility instruction than there is on the effectiveness of most professional education.²⁰

In the past decade, Canadian law schools have increased instruction in the subject. In a survey of law schools it has been reported that 11 of the 16 law schools have a compulsory course in legal ethics, though with various descriptions.²¹ The first

¹⁸ W. Brent Cotter. *Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education*. Federation of Law Societies of Canada's Joint National Committee on Legal Education and the Council of Canadian Law Deans, 1992.

¹⁹ *The Advocate*. Vol. 65, part 6. November 2007, p.761 at 762.

²⁰ *Ibid.* p.766.

²¹ W. Brent Cotter and Eden Maher, "Legal Ethics Instruction in Canadian Law Schools: Laying the Foundation for Lifelong Learning in Professionalism." February 20, 2009 (publication pending). Originally prepared for the Chief Justice of Ontario's Advisory Committee on Professionalism – Symposium on Lifelong Learning in Professionalism ("Cotter and Maher").

casebook on Canadian legal ethics was published last year for use in law school education.

In a recent article on the subject, Dean Cotter and Eden Maher conclude that an exclusively pervasive method of instruction is not sufficiently effective to meet the educational objective.²²

The increasing importance of an understanding of ethical issues may be illustrated by the fact that the Supreme Court of Canada has decided more cases on the subject of solicitor-client privilege in the past decade than it had done previously in its entire history. It has

also decided three significant conflict of interest cases in the past 15 years that have affected practice in all parts of Canada.²³

The Task Force is convinced that dedicated instruction on ethics and professionalism, beginning in law school is essential. It should address both the broad principles of professionalism and the ethical issues with which lawyers must contend throughout their careers, including conflicts of interest, solicitor-client privilege and the lawyer's relationship with the administration of justice.

With the exception of the Law Society of Upper Canada, all the law societies that provided input to the Task Force supported a stand-alone course in professional responsibility. The Task Force has reviewed the Law Society of Upper Canada's submission on this topic. One of the points that Law Society makes is that the Task Force's original characterization of the competency as "professional responsibility" was too narrow and could be restrictively interpreted to refer specifically and only to the Rules of Professional Conduct. It suggests that learning about the rules is better left to the law societies in bar admission programs, articling and professional development. The Task Force agrees that the better description of the competency it contemplates is "ethics and professionalism" and it has made that change to its final recommendations.

²² Cotter and Maher, 2008.

²³ This information was provided to the Task Force in a helpful submission from Dean W. Brent Cotter during the consultation process.

The focus of the competency is on understanding basic ethical principles. The Law Society of Upper Canada, like all law societies, agrees that law school is an appropriate stage at which to begin the process of identifying and applying ethical principles.

The Law Society of Upper Canada's submission raises the concern that there is no justification for deviating in the case of ethics and professionalism from the Task Force's general recommendations in favour of competencies, not courses. It also suggests that requiring a course could have the effect of segregating the topic, rendering it less likely that the topic will be addressed across the curriculum.

As suggested in Dean Cotter's article, which uses data from a law school survey, it would appear that increasingly more law schools are moving toward some form of stand-alone course in this area. The Task Force is encouraged by this development and believes that it highlights to law students the significance of the topic. This increasing focus may in fact engender more exposure throughout the curriculum as students gain greater insight into ethical principles.

Nothing in the Task Force's recommendation limits law schools from continuing pervasive approaches in addition to the stand-alone approach. A number of the schools currently follow both approaches.

Finally, in recognition of the unique nature of its recommendation in this area, the Task Force has specifically not recommended credit hours or teaching methodology, only that there be a course dedicated to the subjects of ethics and professionalism that addresses certain specified competencies. It believes that this strikes the appropriate balance.

The Task Force reiterates what it has said previously, that law societies must also take a greater role in inculcating in their members ethics and professionalism. Law school education can only address the issues in a preliminary way. The importance of lawyers being committed to ethics and professionalism throughout their careers makes it essential that law societies focus on this area in a variety of ways, including in bar

admission programs, continuing professional development programs and ongoing communications with the profession.

Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures. Increasing evidence of external scrutiny of the profession in this area and internal professional debates about ethical failures point to the need for each lawyer to understand and reflect on the issues. In the Task Force's view, the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better.

The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues. To ensure that law students receive this early, directed exposure the Task Force believes a stand-alone course is essential.

Substantive Legal Knowledge

The Task Force's recommendations on the appropriate areas of substantive knowledge that should be included in the entry requirements has engendered significant comment, particularly from members of law faculties. They have raised specific concern about (1) the basis for the substantive areas chosen; (2) the negative effect this "list" of mandatory requirements will have on innovation and flexibility in the law school curriculum; and (3) the danger of a one-size fits all approach.

Law school Deans and faculty understandably expressed concern that the profession may be seeking to dictate law school curriculum and by doing so may undermine the quality of law schools that have benefited from law societies' traditionally minimalist approach to articulating academic requirements for entry to their bar admission programs.

The concept of regulators requiring some degree of substantive legal knowledge of applicants for admission to the profession is a widespread requirement in common law

jurisdictions comparable to Canada. Australia, New Zealand and England and Wales all have required course content designated by the regulatory bodies. The United States does not have such requirements, except for legal ethics, but as the recent study for the Australian Law Deans points out,

it may be that this is explicable given that the state bar examinations have considerable influence on the curricula of the law schools, as most students intend to undertake those examinations.²⁴

In determining what substantive legal knowledge to require the Task Force considered the continued relevance of the current first year curriculum of the 16 law schools, the importance of students having foundational knowledge in both public and private law, the competency framework research undertaken by various law societies in Canada, the regulatory approaches in other comparable common law jurisdictions and the importance of ensuring that the requirements do not interfere with the flexibility and innovation in current law school education.

The Task Force recommends a national requirement that represents a balance between competing perspectives and imperatives. It recognizes that the requirement may represent a snapshot at a point in time. It has considered law school curriculum while at the same time addressing the framework of legal knowledge that its inquiries and consultations have led it to believe are foundational.

A law school graduate with a general understanding of the core legal concepts applicable to the practice of law in Canada, as set out in the Task Force's recommendations, will have the building blocks necessary to go forward into the bar admissions program. The Task Force's recommendations reflects its view that every graduate of a Canadian law school or recipient of an NCA Certificate of Qualification should understand,

- (a) the foundations of law, including principles of common law and equity; the process of statutory construction and analysis; and the administration of the law in Canada;
- (b) the constitutional law of Canada that frames the legal system; and
- (c) the principles of criminal, contract, tort, property and Canadian administrative law and legal and fiduciary principles in commercial relationships;

²⁴ CALD Report, 2008. p.37.

as set out in the Task Force's recommendations.

The Task Force is equally satisfied that nothing in its competency requirements, including in the area of substantive law knowledge, will interfere with flexibility or innovation in the law school curriculum. This is particularly the case because the Task Force has not, with the exception of ethics and professionalism, recommended courses in each competency or dictated credit hours, teaching methodology, or assessment.

The Task Force has received the most comment on the inclusion of the competency now described as "legal and fiduciary principles in commercial relationships." The concern has been raised that unlike the other requirements that simply restate current components of the curricula or are more generic in their description, this competency appears to reflect a more specific content choice. The suggestion has been that this opens up a potentially endless debate on why other areas such as family law, estates, or labour law have not been included.

Just as an understanding of principles of constitutional law, administrative law, contract or property and Canadian administrative law principles are foundational so too is an understanding of the legal concepts in commercial relationships. The Task Force's recommendation is based upon the pervasive nature of commercial relationships to wide ranging areas in which lawyers' advice is sought.

The Task Force received comments on its recommended competencies from the majority of law societies. All agree with the commitment that regulatory standards should not interfere with law school innovation. Some suggest adding or removing one or more competencies, but in general agree that the proposed competencies are acceptable. They are of the view that implementing the competencies should not result in substantial change to law school curricula. They agree that generally it should be left to law schools to determine how students will satisfy the competencies. Law societies also agree with the importance of a national requirement that would be applicable to NCA applicants.

THE APPROVED LAW DEGREE – ACADEMIC PROGRAM AND LEARNING RESOURCES

Comprehensive Legal Education – Institutional Requirements

In the Task Force’s preliminary discussion paper of November 2007 it concentrated on the question of required competencies, but had not yet considered the setting within which students acquire those competencies.

One of the concerns expressed to the Task Force about the competencies approach was that a “list” cannot begin to capture the richness of a law school education - the community in which one begins to think like a lawyer and also to examine law critically and address deficiencies in legal systems and principles. The Council of Canadian Law Deans has emphasized to the Task Force that modern law schools provide a liberal legal education as well as a professional education. Law is an intellectual discipline and the practice of law requires rigorous academic training as well as the development of practice skills.²⁵

Law societies agree with this view of legal education. Accordingly, the Task Force has considered whether to articulate other institutional requirements that should form part of the requirements for entry to law society bar admission programs. In its consultation paper the Task Force sought comment in four areas, namely, law school admission requirements, length of the law school program, program delivery and joint degrees. The most significant comment the Task Force received on these issues was the June 29, 2009 letter from the Chair of the Council of Canadian Law Deans, referred to earlier in this report and set out at Appendix 6.

In that letter Dean Cotter states,

In general terms the CCLD is of the view that the current situation, where Canadian law schools enjoy a margin of manoeuvre to set those requirements, subject to general policies of their universities, produces satisfactory results. While the requirements imposed by each law school are broadly similar, we note that the liberty they currently enjoy is used to

²⁵ Council of Canadian Law Deans. An Overview of Canadian Common Law Legal Education (LL.B./J.D. Degrees) May 2008.

tailor their programs to specific situations or to implement initiatives that are designed to respond to the increasingly diverse needs of the legal profession. There is no evidence that this flexibility threatens the protection of the public in any way. Accordingly, we would urge the Task Force not to recommend the adoption of any stringent standards with respect to those issues.

The Task Force agrees that wherever possible the institutional requirements set out in the national requirement for entry to bar admission programs should reflect current practice in Canadian law schools. This balances the regulatory objectives with law schools' desire to maintain flexibility of approach. By stating current practices as much as possible the Task Force leaves open the door for law schools to advise the Federation if current practices are no longer appropriate. This is particularly true, for example, in the area of technology, as Dean Cotter has expressed in his letter.

Academic Program

Entry Requirements to Law Schools

Law school pre-admission requirements in Canada have historically represented a compromise between the American model, which treats law as a graduate degree and generally requires an undergraduate degree for admission, and the English model, which treats law as an undergraduate degree to which students may gain access from high school.

The Law Society of Upper Canada's 1957/69 requirements mandated a prerequisite of either two years of university education after "senior matriculation" (what was then grade 13 in Ontario) or three years of university education after "junior matriculation" (grade 12).²⁶

Law schools in Canada accept students with a wide range of post secondary education qualifications. A large number of law students hold undergraduate university degrees.

²⁶ It appears that the 2/3-year requirement in Ontario was a compromise between the universities' representatives who initially proposed an undergraduate degree as the prerequisite and the Law Society benchers, who felt that two years was sufficient. C. Ian Kyer and Jerome E. Bickenbach. *The Fiercest Debate*. Osgoode Society, 1987. pp. 250-261.

Some hold postgraduate degrees. At the same time universities accept students who have two years of an undergraduate university education. McGill University accepts approximately 15 to 20% of its first year students directly from CEGEP which is a two-year, postsecondary, pre-university program of study unique to Québec.

Most Canadian law schools make provision for mature students and Aboriginal students who do not have the minimum two years of post secondary education, but are admitted in a special category after individual consideration by admissions committees.

The Task Force sees no reason to interfere with that flexibility, which it considers part of the innovation in law schools that should be encouraged. At the same time, however, the Task Force is of the view that the national requirement should include some reference to admission requirements to law school so as to avoid the suggestion that direct admission out of high school is possible, something which is not currently the case at any of the Canadian law schools.

The Task Force recommends that subject to special circumstances, the prerequisite for entry to law schools will, at a minimum, include successful completion of two years of postsecondary instruction at a recognized university or CEGEP.

Duration of the Program and Joint Degrees

The general law school program encompasses three years of study. This is consistent with requirements throughout North America and in other jurisdictions. A three year program or its equivalent in course credits will allow students to study the core foundational subjects of law and also be exposed to areas of study, including multidisciplinary fields that will enhance their perspective on the role of law and lawyers in Canadian society. The Task Force recognizes that some law schools may prefer a course credit requirement that would enable the student to complete law studies in fewer than three years without reducing the content of the program. Typically the three-year law degree is 90 credits. Accordingly the Task Force recommends that the length of the course requirements be expressed as three years or the equivalent in course credits.

In recent decades many Canadian law schools have introduced joint degree programs with related, but separate disciplines. The Task Force recognizes that interdisciplinary education is a rich and valuable part of law school education. Nothing in its recommendations should be interpreted to interfere with the capacity of law schools to offer such degrees. So long as the student has been engaged in a study of law for three years or its equivalent in course credits, and has acquired the competency requirements in so doing, joint degree programs should satisfy the national requirement. Law schools introducing major changes in their academic program, such as the introduction of a joint degree, should be encouraged to discuss them with the Federation to ensure that their graduates will continue to meet the competency requirements.

Methods of Delivery

The Law Society of Upper Canada's 1957/69 requirements specified that the three-year law school program should consist of full time attendance at a law faculty. Forty years ago the only delivery method for education, short of correspondence courses, was in-person attendance. Today there are new learning and delivery methods. As Dean Cotter's June 29, 2009 letter sets out law schools currently employ a variety of learning methods, including "in class" lectures, seminars, independent research, exchange programs, internships, clinical education, video conferencing with other law schools and so on. Outside Canada there are law schools that offer the degree entirely by way of distance learning.

Technological advances for delivering information are moving rapidly. The Task Force does not wish to inhibit innovative delivery or experimentation in this area. At the same time, however, it is of the view that Canadian law school education should, as it does today, provide a *primarily* in-person educational experience and/or one in which there is direct interaction between instructor and students. The use of the term "primarily" in the Task Force's recommendation is intended to allow for innovation and experimentation.

Learning Resources

The Law Society of Upper Canada's 1957/69 requirements specified the form of an acceptable law school, including the number of faculty, the number of weeks of teaching in a term, the maximum number of hours faculty could teach and other "bricks and mortar" requirements. The ABA maintains detailed accreditation requirements, although this approach is being studied with a view to shifting emphasis to other more outcome based learning measurements.

The Task Force is reluctant to define in great detail the form law school must take, particularly given the role of provincial governments in approving degree granting institutions and the complex university-based decision making process that addresses many of the law schools' physical components. The Task Force does, however, recognize that there are certain necessities for an effective legal education whose graduates can serve the public. The assistance of the working group of the Council of Canadian Law Deans has been considerable in helping the Task Force to appreciate the current practices and their advantages for law student education.

In the Task Force's view the most important consideration is that the law school be adequately resourced to fulfill its educational mission. At a time when all public resources are subject to financial pressures, the Task Force is reluctant to be too prescriptive in its recommendations, but has concluded that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved. To that end it recommends that the law school must,

- be adequately resourced to enable it to meet its objectives;
- have appropriate numbers of properly qualified academic staff to meet the needs of the academic program;
- have adequate physical resources for both faculty and students to permit effective student learning;
- have adequate information and communication technology to support its academic program; and
- maintain a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

The Task Force recommends that the approved Canadian law degree requirements also be applied in considering new Canadian law school applications. The presence of adequate learning resources in new law schools is essential to ensure that the high quality of legal education in Canada is maintained. The provincial and territorial governments will also make decisions in this area. Any new Canadian law schools whose graduates are to be eligible to enter bar admission programs will be required to comply with all of the components of the approved Canadian law degree, set out in the Task Force's recommendations.

COMPLIANCE REQUIREMENTS

Law Schools

National requirements for the approved Canadian law degree will require a national compliance mechanism. This is the most efficient and appropriate way to ensure consistency across the country and transparent, fair and objective processes.

The requirement for a national compliance mechanism does not, however, necessitate an intrusive or onerous approach. Existing Canadian law schools offer a high standard of education and the Task Force is satisfied that compliance with the competency requirements will not pose difficulty for any of them. At the same time, however, the Task Force does recognize that the creation of requirements represents a change in current practices and any compliance mechanism, however modest, will require some adjustment. It also recognizes that the recommendation for a stand-alone course relating to ethics and professionalism and the requirements to address competencies may require adjustment by some law schools.

The Task Force recommends that the compliance mechanism for law schools should be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function. In the annual report the Dean would confirm that the law school has conformed to the academic program and

the learning resources requirements and would explain how the program of study ensures that each graduate of the law school has met the competency requirements.

NCA Applicants

The Task Force recommends that, applying the national requirement, the NCA continue to assess applicants educated outside Canada to determine whether they have achieved the requirements and if not what additional requirements they will have to meet to obtain their certificate of qualification. The national requirement described in this report should provide appropriate guidance and result in NCA applicants being assessed in a manner consistent with graduates from Canadian law schools and in a transparent, objective, impartial and fair manner.

New Canadian Law Schools

The Task Force recommends that the national requirement for the approved Canadian law degree be applied when considering proposals for new law schools. Proposals would be required to demonstrate how graduates of the new law school would meet the requirements for the approved Canadian law degree, including the competency requirements. The Task Force recommends that the Federation's accrediting body be entitled to approve the new law degree with such conditions as it thinks appropriate, relevant to the national requirement.

Effective Date

The Task Force recommends that the Federation forthwith *adopt* the national requirement set out in these recommendations. Adopting the national requirement will make clear to existing law schools, to those making proposals for new law schools and to the NCA administrators and applicants the basis upon which applicants will be entitled to enter bar admission courses on a going forward basis.

It is essential, however, to ensure that the *implementation* of the adopted national requirement is completed in a fair manner that allows sufficient time for all those

affected by it to make the necessary adjustments and changes to their procedures. The Task Force's recommendation for an effective date specifically takes into account that,

- law societies and the Federation will need time to consider and approve the report and recommendations;
- law schools will need time to make any necessary curriculum changes, including in some cases the development of an ethics and professionalism course; and
- the timing of implementation must not prejudice students/applicants already engaged in their law school education or NCA processes.

The Task Force recommends that by no later than 2015, and thereafter, each applicant seeking to enter a bar admission program be required to meet the national requirement. Typically, as relates to applicants coming from law schools in Canadian common law jurisdictions, the requirements will apply to the class entering law school in September 2012, two academic years from now.

The Task Force is of the view that current law schools and the NCA should be encouraged to implement the national requirement before 2015 if they are capable of doing so. Moreover, any new law school proposals put forward before the date should address the national requirement since their own programs would likely be starting very close to or after 2012.

Implementation Issues

In addition to the effective date for the national requirement to apply, there are a number of other implementation issues that must be addressed. These include, but are by no means limited to,

- the form and substance of the standardized annual law school report;
- a mechanism to address non-compliance;
- the Federation's determination of the body to address compliance issues; and
- funding issues.

An implementation committee should begin working immediately to ensure a smooth transition period and the development of a transparent and flexible process that will effectively implement the national requirement.

The Task Force recommends that the Federation establish a committee to implement the recommendations.

CONCLUSION

Law societies have already demonstrated the ability to work together, adjust their individual approaches to embrace a national goal and maintain the necessary ongoing mechanisms to ensure that collaborative approaches remain relevant and meaningful in furtherance of the original goal.²⁷

A national requirement for entry of law school graduates to bar admission programs represents a continuation among law societies of a trend to foster and develop common approaches to regulation in the interest of the Canadian public in general, not limited by province or territory.

A national requirement for entry to bar admission programs addresses the issues raised in this report respecting the protection of the public interest, transparent regulation, fair access to regulated professions, criteria to be applied for new law school applications, AIT and CCB considerations and government scrutiny of regulators.

The requirement does this while at the same time respecting the high quality of legal education that Canadian law schools provide and the flexibility law schools should have to determine the most effective way to meet the requirements.

²⁷ For example, the NMA now provides for territorial mobility through The Territorial Mobility Agreement and work is currently underway on an agreement for mobility with the members of the Barreau du Québec.

TASK FORCE MEMBERS AND PROCESS

The Task Force comprises eight benchers and three staff members from law societies across the country:

John J. L. Hunter, Q.C. (Chair) (British Columbia)
Susan Barber (Saskatchewan)
Babak Barin (Québec)
Vern Krishna, C.M., Q.C. FRSC (Ontario)
Brenda J. Lutz, Q.C. (New Brunswick)
Douglas A. McGillivray, Q.C. (Alberta)
Grant Mitchell, Q.C. (Manitoba)
Catherine S. Walker, Q.C. (Nova Scotia)
Sophia Sperdakos (Law Society of Upper Canada)
Donald F. Thompson, Q.C. (Law Society of Alberta)
Alan D. Treleaven (Law Society of British Columbia)

The Task Force has met 21 times and has issued three previous reports:

- Discussion Paper, November 2007
- Consultation Paper, September 2008
- Interim Report, March 2009

In 2007 the Task Force Chair met with the Council of Canadian Law Deans (“the Council”) and invited input from the Deans. The Task Force met twice with a working group that the Council established whose members were former Dean Patrick Monahan of Osgoode Hall Law School, former Dean Nicholas Kasirer of McGill University and Dean Brent Cotter of the University of Saskatchewan College of Law.

In March 2008 an ad hoc group of law faculty invited the Task Force to a question-and-answer session and provided the Task Force with a paper outlining its perspectives and suggestions outlined during the session.

In September 2008 the Federation authorized this Task Force to distribute its consultation paper to law societies, the legal academy, the profession and legal

organizations and to seek written submissions until December 15, 2008. The Federation distributed the paper to all law societies, the Canadian Association of Law Teachers, the Canadian Law and Society Association, the Canadian Bar Association, the Deputy Minister - Justice Canada, the Minister of Justice and Attorney General of Canada, the Ad Hoc Working Group of Law Faculty that had met with the Task Force at an earlier stage in its work, the Council of Canadian Law Deans, and the provincial Attorneys General. It invited law societies to consult with their own constituencies as they saw fit. A number of law societies issued invitations to their members and legal organizations to provide written submissions.

The Task Force received 37 responses from individuals, law societies, the legal academy, government, and organizations as follows:

Law Societies

Law Society of Alberta
Law Society of British Columbia
Law Society of Manitoba
Law Society of New Brunswick
Law Society of Saskatchewan
Law Society of Upper Canada
Law Society of Yukon

Canadian Law Faculties/Deans/Professors/Students

Professor H. W. Arthurs, Osgoode Hall Law School
Council of Canadian Law Deans
Queen's University Faculty of Law
Dean Mary Ann Bobinski, Dean University of British Columbia, Faculty of Law (Personal Capacity)
University of Calgary Faculty of Law
Bruce Feldthusen, Dean – University of Ottawa (Personal Capacity)
University of Saskatchewan, College of Law
Dean Brent Cotter, University of Saskatchewan, College of Law (Personal Capacity)
Dean Bruce P. Elman University of Windsor Faculty of Law (Personal Capacity)
Associate Professor Joanna Harrington –Faculty of Law, University of Alberta
Canadian Academic Law Library Directors Association (CALLDA)
Canadian Association of Law Teachers (CALT) and Canadian Law and Society Association (CLSA)

Other Law Schools

University of Huddersfield, West Yorkshire England
Lee Stuesser – Bond University

Universities

Wilfred Laurier University

Government

The Hon. Alison Redford, Minister of Justice, Alberta
The Hon. Jackson Lafferty, Minister of Justice, Northwest Territories
Department of Justice, John H. Sims
The Hon. Thomas J. Burke, Attorney General, New Brunswick

Organizations

Canadian Human Rights Commission
Canada Law from Abroad
Office of the Fairness Commissioner – Ontario

Individuals

George K. Bryce
Margaret N. Capes
D. Fox
Ersdale Knight
David Norman
Shaida Ratansi
Brittany Tofangsazan
John W. Whiteside (summary)¹

In June and July 2009 the Task Force received further helpful input from the Council on the issues raised in the Task Force's consultation paper, received a motion that Faculty Council of the University of Ottawa adopted in March 2009 and met with members of law faculties, including a meeting at the University of Toronto Faculty of Law and the Faculty of Law, University of Ottawa to further discuss the issues in the Task Force's consultation paper.

¹ All submissions are available on request.

THE LAW SOCIETY OF UPPER CANADA

Office of the Secretary
(416) 947-3300

Osgoode Hall
Toronto, Canada
M5H 2N6

20th February 1984

David H. Jenkins, Esq.,
P.O. Box 2140,
Seventy Kent Street,
CHARLOTTETOWN, Prince Edward Island.
CIA 8B9

Dear David;

RE: APPROVED CANADIAN LL/B. DEGREES

Background

During the latter decades of the 19th century and the early decades of the present century a legal education in Ontario consisted of a mixture of service under articles in a law office and attendance at lectures in Osgoode Hall.

For the purpose of this letter it is unnecessary to go into detail, but it should be noted that the earliest records indicate a recognition that the substantive law could best be learned in a different way from the techniques involved in the practical application of it. In the period which included the First World War matriculant students were enrolled in Osgoode Hall Law School, entered into articles of clerkship and served in that capacity for five years during which time they also attended lectures at Osgoode Hall, normally, one lecture first thing in the morning and another late in the afternoon. This arrangement made it necessary for all articling to be done in Toronto. Students with a University degree could complete the course in three years.

In 1949 the curriculum changed. Students were required to have a first degree before entering Osgoode Hall Law School and then attended two years full time lectures in Osgoode Hall followed by a third year of full time articling. The fourth and final year harked back to the earlier system and involved half a day's lectures with the remainder of the day devoted to work under articles in the office.

A Time of Ferment

The arrangements just described continued into the second half of the century but were subjected to increasing criticism. Dr. Cecil Wright, a dean of Osgoode Hall Law School and later dean of the University of Toronto Faculty of Law, articulated the dissatisfaction which was growing within the profession with what was called a trade school approach to the teaching of law. It was no longer considered appropriate for law students simply to learn the law and the techniques of applying it. At the University of Toronto Law School they were led to approach existing law critically, to regard the law as a developing organism which should be subjected to critical analysis and which would benefit from imaginative reform. The so-called case method which had developed in the United States became the foundation of an innovative approach to the teaching of law particularly at the University of Toronto Law School. The differences between that school and Osgoode Hall Law School became focused on the requirement that university law school graduates must complete the fourth year of the Osgoode curriculum before being called to the Bar. There was no dispute that the university graduates needed to serve the third year under articles but they resented being required to attend lectures during the fourth year which largely duplicated coverage of subjects they had already studied during their university law course.

During the late 1950's and early 1960's the pendulum attained its furthest swing toward an academic as distinct from a practical approach to the teaching of law.

The Problem of Increasing Enrolment

The average number of students attending Osgoode Hall Law School in the years 1937 to 1940 was about 325. Enrolment fell during the war years to a low of 109 in 1944 but with the end of the war it began to rise. In the Fall of 1945 it had climbed to 445, in 1946 to 700, and in 1947 it reached 801. Between 1948 and 1952 there was a drop to 624 but the following year showed a return to increasing enrolments which were not expected to decline again.

It was clear that the physical facilities at Osgoode Hall had become inadequate to cope with an enrolment of double the number of students it had been designed to accommodate in the pre war years. A special committee of Benchers under the chairmanship of the then Treasurer,

Cyril Carson, Q.C., was formed to address the problem and quickly concluded that two new lecture halls were needed together with accessory rooms for study and instruction as well as increased library facilities.

The committee recognized that the extent of the new accommodation that would be needed was linked to the question of the role that Osgoode Hall would play in legal education in the future and whether or not the Society would continue to assume the increasingly costly bulk of responsibility for legal education. To explore this question the committee invited representatives of eight universities and colleges in Ontario to meet with them to discuss the future of legal education in Ontario. Meanwhile, the need for improved facilities at Osgoode Hall had become so acute that the committee recommended that the building project could no longer be delayed and in October 1955 Convocation approved an immediate start on the construction of an addition to the law school wing.

A New Approach to Legal Education

Approved LL.B. Degree — Bar Admission Course

During a lengthy series of meetings the general form of a new system of legal education began to emerge. The first outlines were sketched in a letter from Dr. W. A. Mackintosh, principal and Vice-Chancellor of Queen's University, Kingston, to the Treasurer, Cyril Carson, Q.C. Later the committee agreed to place the development of the plan in the hands of a small group consisting of D. Park Jamieson, Q.C., John D. Arnup, Q.C. and Professor Corry of Queen's University.

From their meetings emerged a memorandum proposing that for anyone desiring to practise law in Ontario legal education would be divided into three stages: pre law study, law school course and Bar Admission Course. For those wishing to take legal training as preliminary to a business, governmental or a similar career only the first two stages would apply. The memorandum described the three stages as follows:

"A. ADMISSION TO LAW SCHOOL COURSE

1. The minimum requirement for admission to a law school course should be
 - (a) Successful completion of two years in an approved course in an approved University after senior matriculation;
 - or
 - (b) Successful completion of three years in an approved course in an approved University after junior matriculation.

Note: No opinion was reached as to whether a minimum standing in any such course should be required.

2. Of course, a degree in an approved course in an approved University would satisfy the minimum requirement.

B. LAW SCHOOL COURSES

1. The Length of the law school course should be not less than three years.
Under the proposals being considered by the Special Committee of the Benchers, the present Osgoode Hall Law School course would be divided into a full-time academic course of three years and a Bar Admission Course in which the practical training would be given. Thus the two functions which the Law Society now performs as a teaching institution for Legal Education and as part of the accrediting mechanism of the Law Society would be separated.
2. A law school course should contain certain basic subjects which would be compulsory for all students in all schools.
3. Additional subjects to complete the regular course should be at the discretion of each law school.
4. It is also recognized that some law schools may desire to specialize in particular fields.
5. Successful completion of a law school course should entitle the student to a law degree.

C. A BAR ADMISSION COURSE

1. Graduates from the Osgoode Hall Law School academic course or from an approved law course in an approved University in Ontario would be eligible for admission to the Law Society and entrance to the Bar Admission Course at

Osgoode Hall provided they also satisfied the further requirements prescribed by the Benchers such as citizenship, good character and fitness, and payment of fees.

2. Under the proposals being considered by the Special Committee of the Benchers, the Bar Admission Course would consist of a period of service under articles of not more than 15 months (June 1st to August 31st of the succeeding year) and a further period of practical and clinical training at Osgoode Hall, supervised by members of the Law School Staff and practising members of the profession, of not more than 6 months (September 1st to February 28th).
3. Upon proof of the required service under articles and the passing of such oral and written examinations as may be prescribed, the staff of the Bar Admission Course would certify to the Benchers that the student in question had successfully completed such course.
4. Call to the Bar would then follow in the usual way, which under these proposals, would take place not later than March in each year."

Because of the importance of understanding the full scope of the discussions which took place at that time I have attached as an appendage to this letter excerpts from the Report of the Special Committee on Law School of the 14th of February, 1957 in which the three stages of legal education are particularly described; a copy of a letter written in 1957 by D. Park Jamieson, who was then chairman of the Legal Education Committee, to the principals or deans of law schools interested in establishing approved law courses; a summary of the 1957 Regulations of the Law Society respecting approved law courses which set out the courses each approved law school was required to offer.

The new shape of legal education received the support of practitioners and teachers throughout Ontario but also commended itself to the profession in other parts of Canada. It preserved and indeed emphasized the distinction between the substantive and the practical components of a legal training and vested full authority in the law schools to teach the prescribed academic courses without in any way limiting their freedom to teach other courses which might not have direct relevance to a training for the traditional practice of law.

It is clear from the reports of 1957 that the original intention was simply to reshape legal education for Ontario. It soon became obvious, however, that universities in other parts of Canada expected that some of their graduates would want to be able to qualify to practise in Ontario. Also they approved of the direction in which Ontario was moving and were ready to move in the same direction themselves. Accordingly, the Law Society of Upper Canada made it clear that any university law faculty in Canada that was prepared to follow the format which had been adopted in Ontario could be approved for the purpose of having its graduates enter the Bar Admission Course in Ontario. The following is a list of the approved law schools in the order in which they received approval:

Osgoode Hall Law School — 1957
University of Toronto — 1957
Queen's University — 1957
University of Ottawa — 1957
Dalhousie University — 1957
University of Western Ontario — 1958
University of New Brunswick — 1958
University of British Columbia — 1959
University of Saskatchewan — 1961
University of Alberta — 1964
University of Manitoba — 1965
McGill University — 1969
University of Windsor — 1968
University of Victoria — 1975
University of Calgary — 1979
University of Moncton — 1979

In each case the same routine was followed in granting approval: the university law faculty would enquire what standards were to be met, they would receive the information from the Law Society of Upper Canada and after a period of planning would submit a detailed plan to bring themselves within the requirements. Their submission would then be circulated to all

the then existing approved law faculties and any comments received would be sent back to the applicant faculty and if necessary adjustments would be made. Ultimately, with the approval of all the existing faculties, the legal education committee in Ontario recommended to Convocation that the application for approval of the new law faculty be approved. When this was communicated to the faculty concerned they would put the first year's operation into effect followed by the second and third years until full approved status had been reached with the graduation of their first graduates.

There are at present sixteen universities across Canada which confer the approved LL.B. degree. It should be noted that until 1957 Osgoode Hall did not grant an LL.B. degree but rather the degree of Barrister at Law which was done at the same time the candidate was called to the Bar of Ontario. By a change in statute in 1957 Osgoode Hall Law School became empowered to grant academic degrees in law.

The first Bar Admission Course in Ontario began in 1958 composed of about thirty students. As transitional arrangements worked themselves through, the numbers began rapidly to increase as the graduates of the expanding number of approved schools reached the Bar Admission Course stage of their education.

Evolution

Within a few years a number of pressures began to develop within Osgoode Hall which were to have far reaching effects on the new system of legal education.

The physical addition to Osgoode Hall of two large lecture rooms and a series of seminar rooms and additional library facilities were again becoming overcrowded. They had originally been planned to accommodate a larger law school. By the early 1960's they were trying to house both a law faculty and LL.B. program and the Bar Admission Course teaching term. It became obvious that there was not enough room and that the two organizations had quite different needs which could only with difficulty be accommodated in the same space.

A second change was growing in significance. Osgoode Hall Law School had altered its essential nature by relinquishing to the Bar Admission Course the practical component of the legal education spectrum. It began more and more to take on the characteristics of a university law faculty and to lose the characteristics that it had shown during the many years that it had been the only professional law school in Ontario governed directly by the Benchers.

A third pressure came from government. The Law Society received some financial assistance from the government to help defray the costs of running the Bar Admission Course and also to help meet the expense of the new LL.B. program at Osgoode Hall Law School. The government made it clear that they would prefer Osgoode Hall Law School to be affiliated with a university for the purpose of receiving government assistance.

Coincidentally with these developments a new university to be called York was taking shape on the outskirts of Toronto and wished to have a law faculty. It was judged that there was no need for an additional law faculty in Ontario and so the suggestion was made that Osgoode Hall Law School quit Osgoode Hall and move to York University to form the basis of its law faculty. This was done in 1968.

The real significance of the move was that the Benchers no longer were in direct control of an approved law school and the first hand detailed knowledge they had had of the LL.B. course began to slip away from them. They retained the power of approval of law courses for the purpose of having their graduates enter the Bar Admission Course but they lost the intimate connection with one such course which had formed the basis of their control of the development of the courses taught in the approved law schools.

Another important change came about in 1968. The law deans in Ontario felt that the prescribed core courses provided too little flexibility and that if the various approved faculties were to be able to evolve better teaching methods they needed more freedom to decide on the contents of their curricula. They negotiated with the Society with the result that the number of so-called core subjects was reduced from eleven to seven by the deletion of evidence, agency, company law, and wills and trusts from the list of required core subjects.

The Ontario deans made the point that the law itself was evolving quickly and that law school curricula needed to be able to evolve as well and that in addition new teaching methods and techniques made it imperative that the Society evidence their faith in the ability of the law faculties to teach appropriately and well by trusting them to give their students a good legal education.

Traditionally almost every student that embarked on a legal education intended to be called to the Bar and engage in some form of practice. During this period, however, a small but

slowly increasing number of students entered law school intending to use the training in fields outside the traditional practice of law. The situation in this regard had been quite different from the experience in the United States where almost half the students entered law school without intending to practise law. In responding to this development the law faculties particularly in Ontario wanted to broaden the scope of their courses by offering an increased number of elective subjects to accommodate those who intended to enter fields on the periphery of practice or unconnected with practice altogether.

The change from eleven core subjects to seven had been accepted in Ontario without reference to the approved law schools outside Ontario. A number of other provinces deeply resented this unilateral action and proposed that graduates from Ontario would no longer be eligible to enter their Bar Admission Courses. Through several meetings of the Federation of Law Societies the position of the provinces which had been most critical of the change softened first to propose accepting Ontario graduates who had in fact covered the eleven core subjects and finally to accept an Ontario LL.B. on the original basis of equality. It was at this time that the approved Canadian LL.B. began to be known as the "portable" degree.

Role of the Federation of Law Societies of Canada

In view of the history of the development of the portable LL.B. degree in Canada it is understandable how Ontario became the approving authority for the Canadian approved LL.B. degree. It is less clear that it should continue to discharge this responsibility.

At the Federation's meeting in Quebec City in 1983, Ontario suggested that the responsibility be assumed by the Federation.

The development of the approved LL.B. degree in Ontario in 1957 had the effect of introducing a degree of uniformity of approach and content in legal education across the whole of Canada. This in turn has ensured a high degree of mobility for graduates seeking to enter practice in the various provinces and as well has provided a common basis from which LL.B. courses across Canada have developed while maintaining a standard which has remained acceptable nation-wide.

Inevitably as personnel within the various university law faculties change and new Benchers assume responsibility within the various law societies, stresses develop within the framework of the portable LL.B. degree. Individual law faculties wish to introduce innovations to improve both the content of their courses and the teaching techniques being used and it is important that these evolutionary changes do not endanger the portability of the degree. To accomplish this it is suggested that the same degree of consultation among the various law schools as characterized the initial approval of their program should be maintained to evaluate changes a faculty may wish to make which might bear on the basis of its approval or be of interest and assistance to other approved faculties. At present there is no formal reference to the Law Society of Upper Canada by approved law schools when changes in their curriculum or teaching methods are made. It may be that no significant changes have taken place which bear upon the basis for the approval of the degree given by any particular law school but it is not known with certainty whether or not this is the case. This situation must be remedied or the cumulative differences among the various law schools will continue until the very basis of portability is threatened which, once destroyed, might prove extremely difficult or even impossible to re-establish.

There are some indications that some graduates of approved LL.B. courses are coming to the Bar Admission Course in Ontario without adequate grounding in some areas of substantive law. This is occurring notwithstanding that law school faculties have undertaken to counsel students with respect to the courses they should take if they intend to go on to the Bar Admission Course. The extent of the problem is not precisely known, but it has become necessary for the Society to consider means of remedying the defects at the Bar Admission Course stage.

The scheme of legal education which was put in place in 1957 has served well for over a quarter of a century. It is not surprising, however, that it should now be subject to fresh evaluation in the light of circumstances which have been changing rapidly during those years. This letter is not the place to attempt such an evaluation but one or two matters might be identified for the sake of illustration.

It was probably never true that a newly called lawyer was omni-competent and fully capable of practising in any field of law. It is certainly true that the tremendous expansion in the number and complexity of fields of law has rendered such omni-competence quite impossible. It has always been difficult for a practitioner accustomed to handling certain types of matters

to switch the nature of his practice to another field of law. Some assistance can be gained by Continuing Education programs but often such programs do not provide adequate basic grounding for a person attempting to become adept at a new field but rather have been aimed at maintaining and enhancing the competence of those who continue to practise in fields familiar to them.

There is at present considerable discussion of specialization within the practice of law and it is suggested that there should be discussion as well of the possibility of recognizing clusters of related subjects which have in common their relationship to a recognizable area of legal practice. Such discussions might lead to the development of an alternative to true specialization which would involve the co-operation of law schools, governing bodies, and voluntary associations such as the Canadian Bar Association all of which organizations are in varying degrees involved in the initial education and training of lawyers and their continuing education. There is a bedrock of basic law which every lawyer must know and at the other end of the scale there are recognizable areas or fields of legal practice which can clearly be distinguished from other fields of practice each of which fields involves detailed mastery of skills and knowledge peculiar to that field of law. These clusters of knowledge may overlap with the clusters appropriate to another field but the fields themselves are more or less distinct as for example a real estate practice as distinguished from the practice of a criminal advocate.

Many law students recognize at the outset that their talents lie within certain broad limits and at an earlier stage than is now the case. As the conditions of practice change due to economic and other circumstances lawyers who have engaged in practice for some years may wish to change to engage in practice in another field. It is at present difficult for them to obtain the appropriate continuing legal education to enable them to do so.

The rapid expansion in the numbers serving in the legal profession has resulted in a dilution of the experience of the profession as a whole and this has made it more difficult for newly called lawyers to obtain the informal but invaluable counsel and advice of senior practitioners. Terms of articling are often served with quite junior members of the Bar and newly graduated practitioners form firms in which no senior experienced practitioners are included. It may be that some form of conditional licencing is indicated which would require junior lawyers to spend some minimum period of their early practice in association with members experienced in their chosen field of law before being permitted to practise alone or with others as junior as themselves.

These possibilities have been mentioned here to illustrate that after 25 years the present scheme can be expected to undergo re-examination and change. It is important, therefore, that appropriate steps be taken to ensure that these developments proceed if possible without the loss of the portability of the basic legal education.

The anomaly of one province discharging the necessary responsibility of co-ordination and control should be ended. The time appears to be ripe for the Federation of Law Societies to accept that responsibility and to play a central role in the orderly evolution of legal education in Canada. I should like to add a further thought respecting the role of the Federation in the future.

The development of a Federal Court System resembling the organization of a Provincial Court System and the rapid development of matters of national significance such as decisions on the Charter of Rights and Freedoms and the growth of inter-provincial or national commerce and industry which favours professional mobility all point to the desirability of the strengthening of the role of the Federation of Law Societies. In recent years through the auspices of the Federation the cohesion of the law societies across Canada has been greatly enhanced and questions of importance to all provincial governing bodies have been resolved through discussion and co-operation in a way which has bound them more closely together without in any way threatening the autonomy of the individual societies in their respective provinces.

I suggest that the governing bodies across Canada through the Federation of Law Societies not only keep pace with these developments but provide leadership in the consideration of the question of the formation of a Law Society of Canada which would accept responsibility for governing the national aspects of practice without impairing the status or the traditional roles of the individual provincial licencing bodies.

Yours very truly,
Kenneth Jarvis,
Secretary.

Office of the Secretary



THE LAW SOCIETY OF UPPER CANADA

OSGOODE HALL
TORONTO 1

15th April, 1969.

Professor Thomas G. Feeney,
Dean,
Faculty of Law,
University of Ottawa,
Ottawa 2, Ontario.

Dear Dean Feeney:

As you know, the Society's requirements for approval of law courses for the purpose of having their graduates enter the Bar Admission Course in Ontario have been in existence unchanged since 1957. The Legal Education Committee and Convocation have given careful consideration to these Regulations, particularly in the light of the changing conditions of legal education generally. They consider it desirable to introduce a greater measure of flexibility into the stipulated requirements. This will facilitate a greater diversity of emphasis among the approved courses and allow the individual schools to develop along the lines of their special interests.

I am pleased to enclose a copy of the requirements embodying amendments which have the support of the Legal Education Committee and the approval of Convocation.

Yours very truly,

Kenneth Jarvis,
Secretary

J:R

Encl.

Copy for all returning members of the Section Council marked for your information and attention for the particular of the Curriculum of the Committee"
16/4/69 T.G.F.

LAW SOCIETY OF UPPER CANADA

The requirements of the Law Society of Upper Canada pertaining to the approval of Law Faculties for the purpose of the admission of their graduates to the Bar Admission Course as amended on March 21, 1969 are as follows:

1. Admission Requirements

The admission regulations for an approved law school are as follows:

- (a) Successful completion of two years in full-time attendance in an approved course in an approved Canadian university after senior matriculation; or
- (b) Successful completion of three years in full-time attendance in an approved course in an approved Canadian university after junior matriculation; or
- (c) A degree in an approved course in an approved university.

2. Academic Programme

The course for an approved law school is three years in full-time attendance leading to the degree of Bachelor of Laws (LL.B.) or its equivalent.

3. Curriculum

- (a) An approved law school shall offer instruction regularly in the following subject areas:

Agency
Banking and Bills of Exchange
Civil Procedure

Company Law
Conflict of Laws
Constitutional Law
Contracts
Criminal Law and Procedure
Equity
Evidence
Family Law
Jurisprudence or one subject of a
jurisprudential nature
Labour Law
Legal History
Legislation and Administrative Law
Municipal Law
Partnership
Personal Property
Real Estate Transactions
Real Property
Sale of Goods
Taxation
Torts
Trusts
Wills and Administration of Estates

(b) It is understood that the different subject areas may be variously combined or subdivided at the different law schools, hence the above list should be regarded as indicating areas of the law in which instruction will be regularly offered. The list should not be regarded as necessarily establishing courses that must be taught separately or in combination under these specific labels. For example, 'Legislation' and 'Administrative Law' might be two separate courses under those names, whereas 'Personal Property' and 'Real Property' might be combined into a single course entitled 'Property'. Or, under a heading like 'Remedies', substantial parts of 'Civil Procedure', 'Contracts' and 'Property' might be combined.

The same sort of thing could be done under the heading 'Commercial Law'.

(c) Every student shall be required to take the major basic course offered in each of the following subject areas:

Civil Procedure
Constitutional Law of Canada
Contracts
Criminal Law and Procedure
Personal Property
Real Property
Torts.

(d) It is understood that subject to subparagraph 3 (c), the academic planning authority of each approved Law School may provide any or all courses to its students on a required or an optional basis; may require students to elect between alternative courses or groups of courses to attain either diversification or specialization to an extent deemed desirable and may add courses to its curriculum on a required or an optional basis in subject areas other than those listed in subsection 3 (a).

4. Sequence of Courses

The academic planning authority of each approved law school may determine the sequence in which courses are taught.

5. Annual Session and Hours of Lectures

(a) The academic year shall extend for approximately thirty effective teaching weeks exclusive of examination periods.

Each student shall be under instruction or supervision by the teaching staff for approximately fifteen hours per week in class sessions, seminars, tutorials and legal writing or research projects.

(b) The academic planning authority of each approved law school may determine the hours allotted to the various courses offered.

6. Teaching Staff

Chiefly for the benefit of universities considering setting up new law faculties, the Law Society has prescribed certain basic requirements with regard to full-time teaching staff. Thus, the minimum number for the instruction of the first year is three, including the Dean. One additional full-time member must be appointed to the staff for each additional year so that in the result the basic full-time staff will be five when all three years are being taught.

7. Teaching Hours

The maximum teaching load recommended by the Law Society for each member of the full-time staff is six lecture hours per week.

8. Library

The Law Society requires to be assured that adequate

facilities, including library books and reading space, are available to the students and the faculty.

April 1st, 1969.

ENTRY TO THE LEGAL PROFESSION – A COMPARATIVE SNAPSHOT

APPROACHES TO REGULATORY/ACCREDITATION STANDARDS IN OTHER JURISDICTIONS

UNITED STATES

There are hundreds of law schools in the United States and a wide range of quality from superlative to those that operate entirely on-line and are not associated with any university. To address this wide range of quality the American Bar Association (“ABA”) has developed and administers a rigorous law school accreditation process, including a period under provisional accreditation.² As of June 2008 there were 200 ABA accredited law schools in the United States. This is in contrast to Canada’s 16 law faculties that offer a common law degree and six that offer a civil law degree.

There are U.S. law schools that do not have ABA accreditation. In most jurisdictions graduates may only write the state bar examination if they have graduated from an ABA accredited school. A few jurisdictions, such as California, have a separate accreditation system for non-ABA school graduates who may be entitled to write the bar examination. Thus, generally speaking the ABA requirements dictate minimum standards to which the “approved” American law school must conform.

The preamble to the ABA Standards for Approval of Law Schools states that they are founded primarily on the fact that law schools are the gateway to the legal profession. They are minimum standards, designed, developed and implemented for the purpose of advancing the basic goal of providing a sound program of legal education. The preamble goes on to state that an approved law school must provide an opportunity for its students to study in a diverse educational environment, and in order to protect the interests of the public, law students and the profession, it must provide an education program that ensures that its graduates:

- (1) understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
- (2) receive basic education through a curriculum that develops:
 - (i) understanding of the theory, philosophy, role and ramifications of the law and its institutions;

² The American Association of Law Schools also maintains an accreditation system, which operates with a slightly different perspective from the ABA. Member schools must meet its accreditation requirements for membership, but it is not recognized by the Department of Education as an accrediting agency and no jurisdiction requires that a student have graduated from an AALS school in order to gain admission to the bar.

(ii) skills of legal analysis, reasoning and problem solving; oral and written communications; legal research; and other fundamental skills necessary to participate effectively in the legal profession;

(iii) understanding of the basic principles of public and private law; and

(3) understand the law as a public profession calling for performance of pro bono legal services.

The ABA standards then go on for eight chapters setting out the minimum requirements for the organization and administration of a school, the program of legal education, the qualifications, size, instructional role, responsibilities of and professional environment for its faculty, admissions and student services, its library and information resources including personnel and the collection, and its minimum physical facilities.

In addressing the program of legal education the ABA standards state:

Standard 301. *OBJECTIVES*

(a) A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.

(b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.

Standard 302. *CURRICULUM*

(a) A law school shall require that each student receive substantial instruction in:

(1) The substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) Legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) Writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after first year;

(4) Other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

- (5) The history, goals, structure, values, rules and responsibilities of the legal profession and its members.
- (b) A law school shall offer substantial opportunities for:
- (1) Live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;
 - (2) Student participation in pro bono activities; and
 - (3) Small group work through seminars, directed research, small classes, or collaborative work.

In the American context, this approach provides a consistent template against which to measure schools. In an environment of hundreds of schools it provides a highly structured measurement tool to ensure minimum quality. It provides law schools with arguments for funding within their university environments to meet the standards. It recognizes that quality education is about both program content and learning environment.

In September 2008 the Council of the ABA Section of Legal Education and Admissions to the bar began a comprehensive review of the ABA Standards for the Approval of Law Schools. It is expected to take two years. Among the issues under discussion is the proposal to shift the focus of the Standards from input measurement to outcome measurement. The interim report of the ABA's Outcome Measures Committee notes that the proposal flows from a shift in thinking among legal educators in the United States and elsewhere, with particular emphasis on two reports published in the U.S.: WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007); and ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007). The Outcome Measures Report places a great deal of importance on the Carnegie study's analysis of how schools should prepare students to become competent professionals. The Report notes that the Carnegie study,

...ascribes three apprenticeships that should make up their education. The first apprenticeship is the cognitive or intellectual, which provides students with the academic knowledge base. The second apprenticeship is the forms of expert practice shared by practitioners. The third is the apprenticeship of identity and purposes, which introduces the student to the values required of the professional community. ... In shorthand, CF describes these three apprenticeships as "knowledge, skills, and attitude."(p.7)

The ABA has also recently announced the establishment of a “Special Committee on the Professional Education Continuum” to consider the implications of a number of studies and changing theories of pedagogy on the legal education continuum. The goal and approach of the Committee has been described in a memorandum from Randy Hertz, Chair, Section of Legal Education and Admissions to the Bar, as follows:

Using the MacCrate Task Force's conception of legal education and preparation for practice as a continuum that begins prior to law school and continues after law school, the Special Committee will consider the pedagogical innovations stimulated by the Carnegie Foundation's report on legal education, the follow-up work by the Legal Education Analysis and Reform Network (LEARN), and the CLEA "Best Practices" report, and will examine the implications of these developments for all stages of the professional education continuum.

The committee's central purposes will be to (1) contribute to the ongoing national discussion of legal education, bringing to bear the Section's unique perspective as an organization composed of academics, practitioners, judges, and bar examiners; and (2) serve as a resource for and consultant to Section committees that are concerned with one or more of the segments of the professional education continuum. The committee will gather information, write reports or papers as appropriate, and propose conferences and/or workshops as appropriate.

It will be some time before either of these reviews results in any changes to standards or accreditation, but it is clear that there is momentum gaining in the United States for a shift in the approach to both legal education and law school accreditation.

COMMONWEALTH JURISDICTIONS

Australia, England and Wales, and New Zealand focus their attention on curriculum-based requirements.

In both Australia and England and Wales the law degree can be a true undergraduate degree, namely that students may enter it right out of high school. Often the law degree is taken at the same time as another liberal arts or science degree. In some schools it may also be taken following completion of an undergraduate degree.

Australia

Typically the Australian jurisdictions provide that a degree will be accredited if it requires completion of the equivalent of at least three years full-time study of law and a satisfactory level of understanding and competence in the following areas of knowledge:

Criminal Law & Procedure
Torts

Contracts
Property
Equity
Company Law
Administrative Law
Federal & State Constitutional Law
Civil Procedure
Evidence
Professional Conduct.³

In respect of each of these areas of knowledge, the rules in each jurisdiction include a synopsis of the subject area in a schedule, which specifies a range of topics for each area or, as an alternative, requires that topics, of such breadth to satisfy a more general guideline, are taught. So, for example, under criminal law and procedure the academic requirements might be stated as follows:

Criminal Law and Procedure

1. The definition of crime
2. Elements of crime
3. Aims of the criminal law
4. Homicide and defences
5. Non-fatal offences against the person and defences
6. Offences against property
7. General doctrines
8. Selected topics chosen from:
 - attempts
 - participation in crime
 - drunkenness
 - mistake
 - strict responsibility.
9. Elements of criminal procedure. Selected topics chosen from:
 - classification of offences
 - process to compel appearance
 - bail
 - preliminary examination
 - trial of indictable offences.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the general doctrines of the criminal law and in particular examination of both offences against the person and against property. Selective

³ These are commonly known as the Priestley 11, named for the Chairman of the Committee that drafted them.

treatment should also be given to various defences and to elements of criminal procedure.⁴

Although there is currently no formal national accreditation system the uniform adoption of the Priestley 11 in every law school in Australia has meant that there is a strong degree of uniformity to the accreditation process that happens at the State level.

In 2008 the Australian Council of Law Deans (CALD) unanimously approved in principle a national standards model for application to law schools. The issue of a national accreditation system based on the standards is also under discussion. In considering the standards for the law course some outcome measurement language is used as follows:

2.1 Educational Outcome

2.11 The law school has identified, defined and disseminated the attributes that law students should exhibit on graduation.

At the same time, however, the standards speak to “curriculum content.” The standards also address “bricks and mortar” requirements somewhat along the lines of the ABA Standards.

England and Wales

The Law Society of England and Wales and the General Council of the Bar are authorised to prescribe qualification regulations for those seeking to qualify as solicitors or barristers. They have indicated that they will “recognise a course of study leading to the award of an undergraduate degree” if it satisfies the requirements as set out in their *2002 Joint Statement issued by the Law Society and the General Council of the Bar on the Completion of the Initial or Academic Stage of Training by Obtaining of an Undergraduate Degree* (Joint Statement).

The statement includes both resource and program of instruction components, addressing learning resources (includes human resources, physical resources, and student supports), the requirement that the institution granting the degree has such authority granted by the Privy Council, the length and structure of the course of study, standards of achievement expected of students (knowledge and skills), the knowledge and general transferable skills (there is significant overlap between the standards and the knowledge and transferable skills) and the content or coverage of the course of study.

The content or coverage, referred to as the Foundations of Legal Knowledge, is

- a. Public law, including Constitutional Law, Administrative Law and Human Rights
- b. Law of the European Union

⁴ CALD Report 2008. p.78.

- c. Criminal Law
- d. Obligations, including Contracts, Restitution and Tort
- e. Property Law
- f. Equity and the Law of Trusts
- g. In addition, training in legal research.
- h. The remaining half-year in law must be achieved by the study of legal subjects. A legal subject means the study of law broadly interpreted.

The required knowledge and general transferable skills are articulated as

Knowledge

Students should have acquired –

- 1 Knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge.
- 2 A basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practise law.
- 3 The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas.
- 4 The intellectual and practical skills needed to research and analyse the law from primary resources on specific matters; and to apply the findings of such work to the solution of legal problems.
- 5 The ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences.

General Transferable Skills

Students should be able –

- 1 To apply knowledge to complex situations.
- 2 To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them.
- 3 To select key relevant issues for research and to formulate them with clarity.
- 4 To use standard paper and electronic resources to produce up-to-date information.
- 5 To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question.
- 6 To use the English language and legal terminology with care and accuracy.
- 7 To conduct efficient searches of websites to local relevant information; to exchange documents by email and manage information exchanges by email.
- 8 To produce word-processed text and to present it in an appropriate form.

The Solicitors Regulation Authority has recently revised the rules and approaches for the Legal Practice Course (LPC), which is a required step in the process of becoming a solicitor. It follows and builds upon the academic training. The new LPC focuses on outcomes that the successful students should be capable of doing at the end of the

course. They are described as the “irreducible minimums” that all students need to demonstrate to pass.

New Zealand

Legal education regulation in New Zealand is governed by the New Zealand Council of Legal Education. It is an independent statutory body that defines and prescribes courses of study for those seeking admission as barristers and solicitors and for general legal education.

The Council's 2008 report sets out the role of the Council in setting standards:

The general activities of the Council are public interest, regulatory concerns and centre on the Council's responsibilities for the quality and provision of legal training prior to admission as barristers and solicitors.

These activities include -

- setting courses of study for the examination and practical legal training of persons wishing to be admitted as barristers and solicitors in New Zealand;
- providing, or arranging for the provision of those courses of study;
- arranging for the moderation and assessment of those courses of study;
- assessment of qualifications particularly those of overseas law graduates and legal practitioners wishing to practise in New Zealand;
- arranging for the provision of research as necessary, and tendering advice on legal education;
- administering and conducting certain examinations.

To carry out its tasks in discharge of its functions set out in Lawyers and Conveyancers Act 2006, the Council has maintained its general liaison with the Judiciary, the legal profession, the universities and law students, and has specifically undertaken the activities detailed below.

PROVISION OF COURSES

Compulsory Law Subjects

The Council prescribes the core curriculum for the bachelor of laws degree and monitors these subjects through a moderation system. The five compulsory subjects that are moderated are –

Law of Contracts

Law of Torts

Criminal Law

Public Law

Property Law (or Land Law and Equity and Succession where Property Law is not offered.)

In respect of the above subjects the examination papers are settled by a university teacher and a moderator appointed by the Council of Legal Education. Moderation is also required for Legal Ethics which is a compulsory course for admission to the profession. A sixth Council prescribed core degree subject (Legal System) is not moderated owing to the introductory nature of the course and variations between courses.

Subjects Compulsory for Admission

During 1997 the Council introduced a requirement for all law students who completed their bachelor of laws, or bachelor of laws with Honours degrees after July 31, 2000 to pass a university course in Legal Ethics as a further requirement for admission. On August 1, 2008 the requirement was extended to all applicants for admission regardless of the completion date of their degree.

The course which was prescribed and moderated by the Council, has as its broad principles -

- an introduction to ethical analysis including an examination of various theories of ethics
- the applicability of ethical analysis to legal practice
- the concept of a profession and the ethical professional duties of practitioners (which includes, among other topics, conflicts of interest, confidentiality, duties to the Court, duties of loyalty and fidelity)
- the wider responsibilities of lawyers in the community.

The course was introduced in response to a report which had recommended that courses in Legal Ethics be required at three levels of legal education: academic, vocational training and continuing education after admission to the Profession. In New Zealand this was implemented by the Council by the introduction of the undergraduate university course in Legal Ethics which, while not a compulsory degree subject, is required for those students wishing to be admitted to the profession. The requirement was further implemented by the introduction of Ethics and Professional Responsibility components into the Council's Professional Legal Studies Course.

The Council also has responsibility for accreditation of professional legal studies courses.

Scotland

At present, the Scottish legal education and training framework consists of three stages leading to qualification, followed by a Continuing Professional Development regime post-qualification.

Academic stage

The first stage in the route to qualification is the academic stage which, in Scotland, can be undertaken either by way of an Exempting Scottish LL.B. Degree accredited by the Law Society of Scotland, or by way of the Society's own Professional Exams.

Exempting Scottish LL.B. Degree

The Society prescribes the program content and structure for degree programs to be accredited as Exempting Scottish LL.B. Degrees, which, together with other training, will provide entry to the Scottish solicitors' profession. The content and structure is equivalent to the curriculum for the Society's Professional Exams ('the Examination Syllabus').

The Society's current "Accreditation Guidelines for Applicants" for the Exempting Scottish LL.B. Degree state:

The professional subjects taught within the wider context of the LL.B. allow students exiting from an LL.B. to have acquired the requisite knowledge, understanding and generic skills of those subjects that form the foundation of subsequent professional training.

Specifically, those requirements are for:

Subject-specific abilities of:

- knowledge
- legal and ethical values
- application and problem-solving
- sources and research

General Transferable Intellectual Skills of:

- analysis, synthesis, critical judgement and evaluation
- independence and ability to learn

Key Personal Skills of:

- communication and literacy
- personal management
- numeracy, information technology and teamwork

And the following Professional Subjects:

- public law and the legal system
- conveyancing
- Scots private law
- evidence
- Scots criminal law
- Taxation
- European Community law
- Scots commercial law

The Society does not specify the number of credits to be attached to particular courses or, indeed, the overall number of credits to be allocated to the core subjects. What the Society's LLB accreditation guidelines do specify is that the program of study for an accredited LLB must include the study of the Professional Subjects for the equivalent of not less than two years.

Professional Exams

Unlike the Exempting Scottish LL.B. Degree accredited by the Society, the Society's Professional Exams require the individual to be in a pre-Diploma training contract under the supervision of a practising solicitor. The Professional Exams may also be taken by an individual who has graduated or is eligible to graduate with an Exempting Scottish LL.B. Degree but who lacks passes in all of the Professional Subjects. Although there is no validation or authorisation by the Society of firms offering pre-Diploma 'traineeships', the Society requires the pre-Diploma 'traineeship' to cover experience in Conveyancing, Litigation and either Trusts and Executries, or where the training solicitor is not engaged in private practice, the legal work of the training solicitor.

In 2006 the Law Society of Scotland launched a significant project to review all components of legal education from pre-call to post-call requirements. A project plan was introduced at the Annual General meeting in 2009 and is progressing forward. Among other features the proposals focus on learning outcomes. The report on the project notes:

Changing trends in professional education: Increasingly, the trend in professional education has been to move away from prescription of 'process' (ie specifying the length of the course, the curriculum, class sizes, tutor ratios, library holdings, and the like), to description of outcomes which need to be demonstrated. These are often referred to as "competencies", and are, increasingly, being adopted by firms in their use of 'competence frameworks' in order to measure or assess staff performance in a more objective and meaningful way. Jurisdictions in Australia, and England and Wales, as well as other professions, have adopted an outcomes-based approach, an approach which is also supported and encouraged by the UK Quality Assurance Agency for higher education.



Council of Canadian Law Deans
Conseil des doyens et
des doyennes des facultés
de droit du Canada

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June 1, 2009

Mr. John Hunter, Q.C.
Hunter Voith
1040 West Georgia Street
Suite 2100
Vancouver, B.C.
V6E 4H1

Dear John:

**Re: Federation of Law Societies of Canada
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans (CCLD) to offer our perspective on the March 2009 Interim Report of the Task Force on the Canadian Common Law Degree. We note the Task Force's plans for continued engagement with the legal education community regarding its work, and we believe it helpful to share with you our most recent thinking regarding the Task Force's Interim Report.

As I am sure you appreciate, the CCLD has come to regard the Task Force's mandate and activities as one of the most significant developments in many years in relation to legal education in Canada. We have given the issues extensive consideration in our law schools and within our own Council, virtually from the time of our first meeting with you in November of 2007. We have also carefully considered the Reports from the Task Force and the views of others in their submissions to the Task Force. We have appreciated having had this material shared with us.

In this letter we wish to communicate two perspectives or positions related to the Task Force's work. One relates to "competencies". The other relates to "compliance". (We are also preparing a separate response on "Institutional Requirements", which I will send to you in the coming few weeks.). We think that the perspectives we share in this letter are important to the work of the Task Force, and also of long term importance to legal education in Canada, the legal profession and the public that lawyers serve.

We advance them in the context of what we understand to be two acknowledged realities of your work. The first reality is that the legal profession in Canada presently faces the challenge of i) ensuring that a system is in place to ensure that fair consideration is given to foreign-trained lawyers who seek to become qualified to practice law in Canada, and ii) ensuring that a sound process, with sound criteria, is in place to assess applications for

new law schools in Canada. The Canadian law deans see this reality as an acknowledgment that there is a growing need for opportunities to be made available so that more people may take up the study and practice of law in Canada. We fully support this objective.

The second reality is that it is critical that these objectives - captured in the Task Force's mandate - be achieved in ways that do not diminish the quality of legal education presently provided in Canada. Our understanding is that this reality is widely shared within the Canadian legal profession and within the Task Force itself. We note with appreciation the Task Force's recognition of this in the Introduction in your March 2009 Interim Report:

"In varying degrees the submissions raise, directly or indirectly, the question of whether the Task Force intends some fundamental change to Canadian law schools. That is neither our intention nor what we consider to be our mandate. The Task Force fully appreciates the richness of legal education offered in Canadian law schools and the importance to the law schools of preserving their ability to deliver a rich and diverse legal education to students. "

We agree with this observation. It is in this spirit that we express the following perspectives.

With respect to the Task Force's work on the delineation of "competencies", we welcome the acknowledgment that "competencies" does not mean "courses", and that it is within the purview and mandate of a law school to identify the most suitable ways to satisfy "competencies" requirements of its students. We have given careful consideration to the Task Force's perspective on "competencies", as well as the suggestions and proposals of other commentators on this question. It is our considered judgment that if the Task Force continues to contemplate a "competencies" approach, the recommendations of the Law Society of Upper Canada (see attached) in this regard should be adopted by the Task Force. We are of the opinion that they reflect a modernized, relevant and contextual approach to legal education in Canada and that they meet the legal profession's expectations and requirements. Given that the issues leading to the formation of the Task Force are liable to have the greatest influence in Ontario, we are of the view that the Law Society of Upper Canada's perspectives on this question should be given special consideration in your deliberations. It is a framework that the law deans, including the law deans from Ontario, could accept.

Our second perspective is associated with the Task Force's expressed confidence in the quality of legal education in Canada at the present time. It is our view that the Task Force should recommend only those requirements for law school compliance that are necessary for fulfillment of law societies' mandated public interest responsibilities. Indeed these articulated standards are not only met, but exceeded, by our law schools today. It would be unfortunate in the extreme and contrary to the best interests of legal education, the legal profession and the public interest if substantial resources were required to be dedicated to compliance in circumstances where less intrusive alternatives are available to confirm that a high quality of legal education continues to be delivered at our law schools.

As you may know, Deans Monahan and Kasirer are leaving their positions in the near future. The CCLD intends to continue the Working Group of Law Deans, as a liaison group to your Task Force, but with the addition of Dean William Flanagan of Queen's Law School and Interim Dean Daniel Jutras of McGill University, along with myself. We would be pleased to continue our engagement with the Task Force, either through the Working

Group or through the CCLD as a whole, to address any issues related to your work or related to our submissions to the Task Force. We would be available to meet at your convenience.

Sincerely,

W. Brent Cotter
President
Council of Canadian Law Deans

APPENDIX

LAW SOCIETY OF UPPER CANADA
SUBMISSION
TO
THE FEDERATION OF LAW SOCIETIES OF CANADA
TASK FORCE ON THE APPROVED COMMON LAW DEGREE
(NOVEMBER 2008)
EXCERPT (p.6-7)

The Law Society [of Upper Canada] suggest the following as the competences that should be required for entry to law society bar admission/licensing programs in common law jurisdictions in Canada:

- a. Foundations of Canadian common law, including,
 - the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada;
 - Contracts, torts and property law; and
 - Criminal Law
- b. The constitutional law of Canada, including principles of human rights and Charter values and Canadian law as it applies to Aboriginal peoples.
- c. Principles of statutory analysis.
- d. Principles of Canadian administrative law.
- e. Legal research skills.
- f. Oral and written communication skills specific to law.
- g. Professionalism and ethical principles.

In listing these competencies the Law Society,

- supports the Federation Task Force's views that these are *competencies*, not *courses*, and that law students should be able to satisfy them in a number of ways that may differ from competency to competency and law school to law school;
- has deleted civil procedure as a required competency. It is important for law students to understand the principles that govern the resolution of disputes in the Canadian common law system; it is not essential for them to learn specific practice rules in law school. Students should be exposed to the principles while learning the foundations of common law;
- has specified which competencies should be acquired in the Canadian legal context, rather than requiring this of every competency;
- has expanded the competency related to constitutional law principles to include specific mention of Canadian law as it is applied to Aboriginal peoples;

- emphasizes “principles” of administrative law to ensure that there is no confusion that a course is being required. It also suggests that the word “regulatory” is unnecessary;
- has substituted the term “professionalism and ethical principles” for the Federation Task Force’s “professional responsibility”.



Council of Canadian Law Deans
Conseil des doyens et
des doyennes des facultés
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June 29, 2009

Mr. John Hunter, Q.C.
Hunter Voith
1040 West Georgia Street
Suite 2100
Vancouver, B.C.
V6E 4H1

Dear John:

**Re: Federation of Law Societies of Canada
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans to follow up on my previous letter of June 3, 2009 in order to provide, as promised, the CCLD's perspective on the Approved Common Law Degree described as "Institutional Requirements" in the March 2009 Interim Report by the Task Force. We have tried to respond to the Task Force's "Institutional Requirements" questions as presented in the Interim Report, but have also added a few comments on some aspects of Canadian law schools' present commitment to our 'institutional infrastructure' that we urge the Task Force to incorporate into its final report.

In general terms, CCLD is of the view that the current situation, where Canadian law schools enjoy a margin of manoeuvre to set those requirements, subject to the general policies of their universities, produces satisfactory results. While the requirements imposed by each law school are broadly similar, we note that the liberty they currently enjoy is used to tailor their programs to specific situations or to implement initiatives that are designed to respond to the increasingly diverse needs of the legal profession. There is no evidence that this flexibility threatens the protection of the public in any way. Accordingly, we would urge the Task Force not to recommend the adoption of any stringent standards with respect to those issues.

1. Entry Requirements

The Task Force Interim Report asks whether the current entry requirement of two years of university education should be maintained or whether the "*de facto* requirement of an undergraduate university degree" should be adopted.

We think it is inaccurate to speak of a "*de facto* requirement" of a prior university degree. While it is true that a large number of law school entrants do hold such a degree, and

sometimes even a masters or a doctorate, some Canadian law schools have, in circumstances including but not limited to mature students and Aboriginal students, felt entitled to admit students with less than a university degree.

Moreover, it is well-known that at McGill University about 15%-20% of the first year students arrive directly from CEGEP (*i.e.*, a two-year, post-secondary, pre-university program of study). McGill has decided that the level of achievement of this small group of CEGEP candidates is so outstanding that these students deserve admission. As a matter of fact, this group regularly produces some of McGill's best students: gold medalists, Supreme Court clerks, Trudeau Foundation scholars. Many of them go on to careers of high achievement as lawyers in Canada or elsewhere around the world. There is every reason to believe that these students are no less equipped to practice law than others. Moreover, Québec universities, including McGill, cannot require more than a CEGEP degree for entry into any undergraduate degree, including law.

There are other programs for the joint study of the civil law and the common law, including the University of Ottawa's National Program and Programme de droit canadien, the exchange programs between Université de Montréal and Osgoode Hall Law School and between Université Laval and the University of Western Ontario, and the graduate common law programs at Université de Montréal and Université de Sherbrooke, and finally the Université de Sherbrooke and Queen's University program. A number of graduates from those programs entered law school directly from CEGEP. Again, there is no reason to believe that they are less equipped to practice law. To take the University of Ottawa's National Program as an example, evidence has shown that outstanding CEGEP students perform equally well in law school as students who hold a prior university degree, and graduates of the National Program have led successful careers throughout Canada.

We would also point out that Canadian law schools participate in a number of joint programs where law is studied concurrently with another discipline. In some circumstances, this may result in a student beginning to study law before completing the requirements of the other degree. Yet, those students are held to the same standards for their law courses and there is no evidence to suggest that they perform differently than students who completed their undergraduate degree before the commencement of their law degree.

Therefore, in the absence of cogent evidence that the current situation is problematic in terms of the protection of the public, we would recommend that the flexibility currently enjoyed by each law school with respect to entry requirements be maintained.

2. Duration of the Program

We believe that it is more appropriate, and more in line with university practice, to express the duration of university studies in terms of credits rather than years. Increasingly, universities are recognizing that teaching takes place during summers, on exchange with other universities, through internships, on a part-time basis and subject to other temporal modalities. These days, it is more reliable to speak about the academic program by reference to credit requirements.

In this regard, the usual duration of a common law degree is 90 credits. This amounts to three years of study, excluding summer terms. However, we would suggest that this need not be a strict requirement, in order to take into account situations including, but not limited to courses followed in other faculties, exchange programs abroad, joint common law and civil law degrees, a common law degree undertaken after a Canadian civil law degree and joint degrees involving law and another discipline.

3. Methods of Delivery

The Task Force asks whether “in-person” learning should be a requirement for all or part of the common law degree, or whether other delivery systems should be taken into account. We understand the expression “in person” to mean direct interaction with an instructor.

Canadian law schools employ a variety of learning methods, including “in-class” lectures, seminars, independent research, exchange programs, internships, clinical education, and so forth. Some of those methods may not constitute “in-person” learning strictly speaking. The benefits of employing a variety of learning methods within a curriculum are widely acknowledged. Law professors retain a substantial discretion over the choice of learning methods, and CCLD members recognize the value of academic freedom in this regard. On the whole, Canadian law schools have strived to provide their students with the best learning methods.

Canadian law schools have begun to explore the possibilities offered by technological advances to embrace new methods of learning that would enrich the students’ learning experience. We would point out that technology allows forms of direct interaction between student and instructor that may be as beneficial as classical “in-person” interaction. To some extent, technology may help to make legal education more accessible to persons with disabilities, or to persons living in remote areas.

CCLD is of the view that it is too early in the adaptation of law teaching to technology to set precise standards concerning learning methods. We are concerned that precise standards could stifle creativity and prevent law schools and law professors from embracing technological advances to improve their students’ learning experience. Nevertheless, we do believe in the value of currently employed learning methods that may loosely be described as “in-person” and we do not support their replacement with technology-based learning. We believe that substantial “in-person” learning, with the opportunities for significant formal and informal engagement between the students and the instructor, and among the students themselves, provides important learning opportunities that are not able to be achieved in other ways.

4. Joint Degrees

Joint degrees, involving the study of law and another discipline, are common among Canadian law schools and are increasingly popular. These programs are designed to train professionals who will be able to successfully integrate another discipline in their legal practice. Law schools have been uniformly vigilant about preserving the law-specific character of their degrees so that the interdisciplinary experience complements legal training rather than acts as a substitute for the law. There is no indication that graduates of these programs fail to meet the regulatory standard of protecting the public.

CCLD is of the view that joint programs do not require a monitoring procedure distinct from the one envisaged for the regular common law degree.

5. Research and Scholarship

The importance of research and scholarship was not raised in the most recent Interim Report of the Task Force. Nevertheless, it is one of the features of Canadian legal education that has introduced into Canadian law schools a degree of vibrancy and relevance unparalleled in prior generations. We are strongly of the view that a law school without a commitment to research and scholarship is doing a disservice to its students, to the law, to the legal profession and to society itself. While we appreciate that the legal profession is not directly mandated to promote legal research and scholarship, we think it would be a serious mistake to fail to appreciate the ways in which faculty members committed to the scholarly enterprise of legal education, enrich the learning experience for students and prepare them for professional careers. The work of law teachers who are also legal scholars gives students the tools to see the law in imaginative ways, to give them the confidence to search for new perspectives in law, to approach legal problems and issues in a new light and to search out innovative solutions for their clients. This contribution to legal education is one of the most dynamic features of Canadian law schools, and contributes to an enriching legal education for students. In our view a commitment to research and scholarship is a critical 'institutional feature' of a modern, high quality law school.

6. Institutional Infrastructure

Though the Task Force did not identify the following institutional requirements of a modern, high quality law school in Canada in its most recent Interim Report, we wish to emphasize that other features of Canadian law school infrastructure are critical to the maintenance of quality. We urge you to address in your final report the essential nature of a well equipped law library, of appropriate faculty-student ratios, of law school investments in financial aid for students to ensure access to legal education, and related features of a legal education that have helped to maintain and improve the quality of Canadian law schools to date. Absent a recognition of these requirements, the Task Force risks inviting a minimal framework for the establishment of law schools in Canada and invites a 'race to the bottom' regarding legal education in Canada. This is surely in direct opposition to the mandate of the Task Force, is a set of potential outcomes that the Task Force itself would oppose and, most importantly, is the opposite of what Canadians rightfully expect of a high quality of legal education intended to protect and advance the public interest.

We appreciate the opportunity to share these perspectives with you and your Task Force, and welcome the opportunity to continue the dialogue on legal education with you and your colleagues.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Cotter". The signature is written in a cursive, flowing style.

W. Brent Cotter, Q.C.

Professor and Dean
College of Law
University of Saskatchewan

President
Council of Canadian Law Deans

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The Law Society of
Upper Canada | Barreau
du Haut-Canada

Report to Convocation February 25, 2010

LICENSING & ACCREDITATION TASK FORCE

Task Force Members

Vern Krishna (Chair)

Raj Anand

Constance Backhouse

Larry Banack

Thomas Conway

Susan Hare

Carol Hartman

Janet Minor

Laurie Pawlitzka

Bonnie Tough

Purpose of Report: Decision

**Prepared by the Policy Secretariat
(Sophia Spurdakos 416-947-5209)**

TASK FORCE PROCESS

1. The Task Force met on October 26, 2009, November 5, 2009, November 27, 2009 and February 8, 2010 to consider the final report of the Federation of Law Societies of Canada's Task Force on the Canadian Common Law Degree and to make recommendations to Convocation.

MOTION

2. That Convocation approve the October 2009 final report of the Federation Task Force on the Canadian Common Law Degree.
3. That Convocation recommend that the Federation committee responsible for implementation,
 - a. include appropriate representation from Canadian law schools, and
 - b. seek approval of law societies for the Federation implementation committee's proposed recommendations for implementation and compliance policies, procedures or provisions.

BACKGROUND

4. The Federation of Law Societies of Canada established the Task Force on the Canadian Common Law Degree in June 2007 ("the Federation Task Force") to review the criteria in place establishing the approved LL.B/ J.D. law degree for the purposes of entrance to law societies' bar admission/ licensing programs. The Federation Task Force submitted its final report ("the final report") to Federation Council in October 2009, a copy of which is set out at **Appendix 1**.
5. Federation Council has referred the final report to law societies for approval and requested that law societies consider it by March 2010. As of February 11, 2010 seven (7) law societies have considered the final report and all have approved it.
6. Earlier, in September 2008 the Federation Task Force distributed a consultation report to law societies for comment. The Law Society's Licensing & Accreditation Task Force ("the L&A Task Force") proposed a submission to Convocation, which was approved and provided to the Federation Task Force. A copy of the Law Society's November 2008 submission is set out at **Appendix 2**.
7. The L&A Task Force has reviewed the final report and makes the recommendations set out in the motion at paragraphs 2 and 3 of this report. In developing these

recommendations the L&A Task Force considered how the final report differs from the Law Society's November 2008 submission and in this report addresses its views on those differences. In reaching its recommendations it has also considered a number of letters and articles it has received that comment on the Federation Task Force Report. These are set out at **Appendix 3**.

8. This report and recommendations represent the views of all the Task Force members, with the exception of one member whose minority view follows this report.

THE FEDERATION TASK FORCE FINAL REPORT

9. The L&A Task Force recommends that Convocation approve the Federation Task Force's final report ("the final report") set out at **Appendix 1**.
10. The final report's recommendations reflect an approach that balances law societies' regulatory responsibilities with continued respect for the academic freedom so important to law schools and the profession. This balance is reflected throughout the final report, including in the proposed national competency requirement, approved law degree and compliance regime.
11. There are some differences between the recommendations in the final report and the Law Society's November 2008 submission. The Task Force has discussed these differences and has concluded that any such differences are best addressed through the implementation process, as discussed below. Moreover, any differences between the Law Society's November 2008 submission and the final report are not so significant as to undermine the overall balanced approach recommended in the final report.
12. In its November 2008 submission the Law Society supported the proposition that law school graduates seeking to enter law society bar admission programs/licensing processes should have acquired certain "foundational competencies" in law school.
13. The final report builds on this competencies approach and recommends that law societies in common law jurisdictions establish a uniform national requirement for entry to their

bar admission programs/licensing processes “to be expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education.” The final report then goes on to set out the basis of an “approved law degree” for the purposes of entry into bar admission/licensing processes, outlining the qualifying academic program and the necessary learning resources that must be present.¹ This approach is reasonable and balanced and should be approved as the national requirement.

14. The Federation Task Force has accurately expressed why law societies must establish a national requirement for entry to their bar admission programs/licensing processes. Greater government scrutiny of regulators across Canada has resulted in increasing demand for transparency, fairness, objectivity and consistency in regulatory decision making. The passage of fair access to professions legislation in Ontario, Manitoba and Nova Scotia, the recent amendments to the Agreement on Internal Trade guaranteeing full national labour mobility and the 2009 agreement of the federal government and provincial and territorial premiers to develop a pan-Canadian framework for the recognition of foreign qualifications are clear examples of this governmental scrutiny and priorities.²
15. Equally importantly, law societies across the country share the same values and responsibilities to regulate in the public interest. Increasingly they are addressing their responsibilities through national approaches. The Federation Task Force’s recommendations reflect this. Its recommendations will not only enhance the approach to entry to bar admission programs/licensing processes in all common law jurisdictions, but will apply as well to the accreditation process for those with international law degrees and will guide schools seeking to establish new law faculties.
16. Despite its concentration on the regulatory perspective, the final report is replete with references to the importance of ensuring a regulatory approach that respects the role of

¹ Federation Task Force Final Report. Executive Summary, Recommendation 4. (“Final Report”).

² The scrutiny is directed at all professions.

flexibility and innovation in law school curricula, does not overly interfere with law schools' ability to design their curricula to meet their institutions' mandates, and recognizes that law schools are only one part of the legal educational process.

17. The Federation Task Force states,

Law societies respect the academic freedom that law schools vigorously defend. There is a strong tradition within the legal education system, particularly in North America, to view law school education as not simply a forum for training individuals to become practitioners of a profession, but also as an intellectual pursuit that positions its graduates to play myriad roles in and make valuable contributions to society.³

18. It is clear throughout the final report that the recommendations are intended to support this approach. With one exception, which is discussed below, the Federation Task Force recommends that it be left “to law schools to determine how their graduates accomplish the required competencies.” The required competencies proposed by the Federation Task Force are by and large already within law schools' curricula, leaving ample room for them to pursue innovative programming, delivery methods and area specialization as they deem fit. Further, the Federation Task Force's recommended compliance component makes it clear that “an intrusive or onerous approach” is not necessary. Finally, in articulating what will constitute an “approved Canadian law degree” the Federation Task Force has largely confirmed criteria that are currently in place.

19. During consultations,⁴ the L&A Task Force heard the concerns of some members of the legal academy that the competencies are rigid and over-inclusive. Some believe the approach will fundamentally alter the relationship between law schools and law societies. Some are concerned that the approach will undermine law school independence and innovation.

20. The L&A Task Force has borne these comments in mind as it reviewed the final report. It believes that the final report and recommendations have addressed a number of these concerns and that the implementation process can largely alleviate the rest. While the

³ Final Report, p.18.

⁴ And repeated in some of the correspondence in Appendix 3.

recommendations are an articulation of national requirements, they do not represent a sea change in legal education and should not be viewed as such. While the Council of Canadian Law Deans disagrees with certain specific components of the Federation Task Force's recommendations, it endorses the general competencies approach.

21. The final report notes that “for a national approach to succeed, provincial and territorial law societies must think nationally, as they did when adopting the NMA [National Mobility Agreement], the anti-money laundering rules and client-identification rules.”⁵ The Federation Task Force also notes that such a commitment will on occasion require compromise, but it believes law societies have enormous capacity to work together. The L&A Task Force agrees.
22. The L&A Task Force has reflected on those few areas in which the Law Society's November 2008 submission differs from the final report. It has reviewed the rationale behind the Federation Task Force's final recommendations in these areas. It has also considered the Federation Task Force's recognition that an implementation committee should be established to address a number of issues.
23. For the reasons set out in the final report and here, national requirements for entry to bar admission programs/licensing processes are an important enhancement to law society processes. The first step to moving forward is passage of the final report. From there the implementation process can reasonably and fairly be used to refine the requirements. In moving from principle to practice the implementation process can address areas of concern.
24. In furtherance of this belief, the L&A Task Force's recommendation of approval of the Federation's final report is accompanied by two other recommendations. It recommends appropriate representation from Canadian law schools on the Federation implementation committee. It also recommends that the Federation implementation committee seek the approval of law societies for its proposed recommendations for implementation and compliance policies, procedures or provisions.

⁵Final Report, p.24.

25. Both these recommendations will contribute to effective implementation. The law schools' perspective and contribution would be an important part of the process and law societies would have the ability to ensure that the implementation reflects the principles underlying the report and addresses any areas that require clarification.
26. The Federation's goal will be to establish an implementation committee with a well-balanced membership of law society representatives, appropriate representation from Canadian law schools and any other members it may consider helpful to the implementation process. The Task Force is confident that in considering appropriate Ontario representation on the implementation committee the Federation will give consideration to the fact that Ontario has over one third of the law schools in the country offering a common law degree, receives the majority of the NCA Certificate holders and has the longest history with fair access to professions legislation and its implementation. The Task Force also expresses its recommendation that the implementation committee of the Federation provide regular reports to law societies during the course of its work to keep law societies apprised of its progress. This is important to ensure law societies remain connected to the issue.

CONSIDERATION OF ISSUES RAISED IN THE LAW SOCIETY'S NOVEMBER 2008 SUBMISSION

27. The final report's recommendations differ from Law Society's November 2008 submission in three areas:
 - a. The recommendation for a stand-alone course in ethics and professionalism.
 - b. The inclusion of a competency known as "legal and fiduciary concepts in commercial relationships."
 - c. The compliance mechanism.⁶

⁶ It is important to note that in a number of areas where the Law Society's November 2008 submission differed from the Federation Task Force's consultation paper the Federation Task Force's final report reflects the Law Society's perspective, as follows:

- a. The Law Society suggested the removal of civil procedure as a separate competency. The final report adopts this.
- b. The Law Society recommended adoption of the term "ethics and professionalism," rather than "professional responsibility" to identify the competency. The final report adopts this.
- c. The Law Society recommended the removal of a number of separate competencies, two of which the Federation Task Force accepted.

28. There is one additional area on which the L&A Task Force provides comment in this report. It addresses an issue concerning Canadian law as it applies to Aboriginal peoples that the L&A Task Force believes is worth exploring at the implementation level.

(i) Stand-Alone Course in Ethics and Professionalism

29. In its consultation report the Federation Task Force sought comment on the requirement of a stand-alone course in what it then called “professional responsibility.” It stated as follows:

Such a course should address both the broad principles of professionalism and the ethical issues with which lawyers must contend throughout their careers, including in areas such as conflicts, solicitor client privilege, and the lawyer’s relationship with the administration of justice.⁷

30. The Law Society of Upper Canada was the only law society that raised concern about a stand-alone course. It felt that the Task Force’s consultation document did not provide a justification for an exception from the “competencies” approach for an ethics and professional course requirement. It commented that a stand-alone course ran the danger of segregating the topic and rendering it less likely to be addressed across the curriculum. It agreed that law students should be taught principles of ethics and professionalism, but was concerned about mandating a course.
31. The L&A Task Force has re-examined the Law Society’s comments in the face of a number of factors. Eleven of the 16 law schools have indicated that they already offer a mandatory “course” in professionalism and ethics. The law school argument against a regulatory requirement does not appear to be based on the merits of the approach, but rather on the interference with a law school’s ability to allocate its resources and determine its pedagogical approaches as it sees fit. The L&A Task Force notes, however, that there is precedent for the regulator mandating specific courses, at least in Ontario where the 1957/69 requirements mandated seven courses.⁸ These mandated courses have not stifled creativity and innovation within law schools.

⁷ Consultation Report (September 2008). p. 22.

⁸ Civil procedure, constitutional law of Canada, contracts, criminal law and procedure, personal property, real property and torts

32. A mandated ethics and professionalism course does not undermine the Federation Task Force’s competencies based approach. The Federation Task Force has recognized the need for flexibility in law school education, through its general approach to competencies versus courses. It has made an exception for ethics and professionalism, based on its view of the fundamental nature of this topic in the development of lawyers. While the “embedded” approach to ethics and professionalism is seen by some as a viable alternative to the stand-alone course, the Federation Task Force has concluded that more is needed in an area that underpins the profession. It does not view the law school as the only place for this learning, but considers the need for focus on the topic as properly within legal education from the outset. Moreover, the stand-alone course can better lay the groundwork for successfully embedding the topic in other substantive courses.
33. The L&A Task Force has carefully considered the following principle that the Federation Task Force emphasizes in proposing a stand-alone course:
- ...in recognition of the unique nature of its recommendation in this area, the Task Force has specifically not recommended credit hours or teaching methodology...⁹
34. The Federation Task Force was interested in law schools “spotlighting” the topic. It did not circumscribe the course’s length or the teaching methodology. This provides enormous latitude to the law schools in the development of the course. In the L&A Task Force’s view this recommendation is a balanced approach to the issue and the Task Force endorses it.

(ii) Legal and Fiduciary Concepts in Commercial Relationships.

35. In its consultation paper the Federation Task Force indicated its view that,
- ...business organization concepts affect a multitude of legal relationships in the Canadian legal system. Competency in these principles and concepts is fundamental.¹⁰

⁹ Final Report, p. 34.

¹⁰ Consultation Report. (September 2008), p. 20.

36. The Law Society’s November 2008 submission considered this an important competency, but was of the view that it did not need to be acquired in law school. The Law Society’s submission expressed the concern that this competency,
- ...open[s] up a potentially endless debate of what else should be included, with proponents of different components each advocating strongly for their particular area of law. This could result in law school curricula being largely mandated, a development that is neither necessary nor in the interest of quality education.¹¹
37. By renaming the competency “legal and fiduciary concepts in commercial relationships” the Federation Task Force sought to minimize the concern that some expressed to the Federation Task Force that, “unlike the other requirements that simply restate current components of the curricula or are more generic in their description, this competency appears to reflect a more specific content choice.” The Federation Task Force noted that,
- the suggestion has been that this opens up a potentially endless debate on why other areas such as family law, estates, or labour law have not been included. Just as an understanding of principles of constitutional law, administrative law, contract or property...are foundational so too is an understanding of the legal concepts in commercial relations.¹²
38. There is nothing in the final report to suggest that there was in fact pressure on the Task Force to add additional areas because “business” was in the mix. Moreover, although it has been suggested to the L&A Task Force that the inclusion of this competency would send the message that business law is more important than other areas such as poverty law, the L&A Task Force does not agree with this interpretation.
39. The recommendation in this area is not any different than the approach taken to administrative, contract, property and other competencies. Like the other competencies, it refers to principles, not courses, and denotes no special emphasis that distinguishes it from the other competencies. The Federation Task Force’s only special emphasis is in ethics and professionalism, where it recommended a course.

¹¹ L&A Task Force submission, p. 7.

¹² Final Report, p. 37.

40. The listing of a competency in this area is not directed at training Bay Street corporate lawyers. It simply recognizes that it is important for law students to understand the principles underlying legal structures and relationships. Lawyers are called to the bar as generalists. They may choose to specialize, but their education and training must be broadly based, to accommodate sole and small firm practice. The L&A Task Force has been told that over 95% of law students currently obtain some exposure to this competency. It is likely they do so not because they plan to become corporate lawyers, but because they must understand these principles in whatever area they practise.
41. The renaming of this competency may confuse law schools about what will satisfy the competency. The most effective way to resolve this is through the implementation process. In fact, it may be possible to satisfy the competency in commercial relationships within other included competencies of contracts, property, torts and principles of common law and equity.

(iii) Compliance Mechanism

42. In its November 2008 submission the Law Society expressed concern about the introduction of a national monitoring body to address compliance with the requirements. It suggested that while it makes sense in the American context where there are hundreds of law schools of differing quality, it may not be necessary in Canada. It assumed that a national body would be “expensive, time consuming and controversial and difficult to implement because of the need for unanimity among all law societies.” The Law Society’s November 2008 submission noted that the consultation document provided little information on the nature of any monitoring regime.
43. The Law Society’s submission preferred an approach somewhere between the status quo and the approved law degree models the Federation Task Force described in the consultation document.¹³ National requirements would be articulated, but with no law

¹³ Under the “status quo” law societies have, in effect, not monitored law school curricula. They have accepted that students with a degree from one of the 16 Canadian common law faculties are automatically eligible for admission into law society bar admission programs. Under the approved law degree option a required standard would be established and law faculties would demonstrate what they are doing to ensure that their graduates have achieved the required competencies.

society monitoring. The Law Society's November 2008 submission noted that nothing "in law societies' relationship with the current 16 common law schools suggests that a [monitoring regime] is necessary."

44. The final report recommends a compliance mechanism on the basis that "this is the most efficient and appropriate way to ensure consistency across the country and transparent, effective and objective processes."¹⁴ However it emphasizes that an intrusive or onerous approach is not necessary, thereby addressing some of the concerns in the Law Society's November 2008 submission.
45. The Federation Task Force recommends a standardized annual report that each law school Dean completes, confirming that the law school has conformed to the academic program and the learning resources requirements, and explaining how the program of study (of the school) ensures that each graduate has met the competency requirements. The Federation Task Force recommends that the form and substance of the report should be developed as part of the implementation process.
46. This recommendation represents an appropriate compromise between the approach suggested in the Law Society's November 2008 submission and a highly bureaucratic and intrusive approach about which the submission was concerned.
47. In this recommended model it is the Dean who certifies compliance rather than an outside third party, an important indication that the Federation respects the role of law schools. Moreover, the monitoring system does not require the Dean to certify each graduate, rather it relies on the Dean confirming that the curriculum is such that the competencies are addressed and the law school has met the academic program and learning resources requirements. Finally, the Federation Task Force has recommended a long period for implementation until 2015, giving ample opportunity to ensure an effective process and compliance with the national requirements.
48. It is the L&A Task Force's view that once the implementation process is defined, the monitoring process will be simple and inexpensive. Having addressed what, if anything,

¹⁴ Final Report, p. 43.

the school must do to meet the criteria, the Dean will then be in a good position to continue to certify compliance from year to year. At the same time, with a monitoring process implemented across the country, there will be consistency upon which regulators can rely when admitting graduates from any common law school to their bar admission/licensing programs. Monitoring is an integral part of law societies' roles in the United States, Australia and England and Wales. The processes there are far more intrusive and detailed than the Federation Task Force recommends. The L&A Task Force is now satisfied with the reasonableness of the proposed approach.

CANADIAN LAW AS IT APPLIES TO ABORIGINAL PEOPLES

49. In its November 2008 submission the Law Society suggested expanding the Federation Task Force's proposed competency "constitutional law of Canada, including principles of human rights and Charter values" to read "the constitutional law of Canada, including principles of human rights and Charter values and *Canadian law as it applies to Aboriginal peoples.*"
50. In its final report the Federation Task Force refined the competency to read,

The constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and *the rights of Aboriginal peoples of Canada.*
51. In discussing the difference in the wording of the two proposed approaches, the L&A Task Force has realized that there was some ambiguity in what was intended by the language used in the Law Society's November 2008 submission. Most members of the L&A Task Force assumed that the additional language, inserted as part of the Canadian constitutional law competency, simply expanded on what should be addressed within that competency. On that basis there is little difference between the Law Society's November 2008 submission and the Federation Task Force's final report.
52. Another view has been expressed, however, that the addition was not limited to constitutional law, but rather was intended to incorporate, throughout the law school curriculum, education on the ways in which Canadian law applies to and affects

Aboriginal peoples. This would be done by embedding in each course, where relevant, consideration of these issues.

53. The L&A Task Force recommends that the issue be considered in the implementation process. It represents an important perspective in the education of law students and is likely already part of many law school courses. In considering the issue it would be essential to seek input from those with expertise on the issue.

CONCLUSION

54. In its November 2008 submission on the Federation Task Force consultation process the Law Society agreed with the main principle of a national requirement for entry to bar admission/licensing programs in common law jurisdictions and with most of the competencies proposed. Its submission reflected some concerns with three aspects of the consultation paper.
55. It has carefully reviewed the Federation Task Force's final report and is satisfied that the report represents a balanced approach to national regulatory requirements for entry to bar admission programs /licensing processes that respects and supports innovation and creativity in law school education.
56. It strongly recommends Convocation approval of the October 2009 final report of the Federation Task Force. It believes that the final report has addressed the concerns the Law Society raised in its November 2008 submissions, and that the implementation process is the most appropriate forum to resolve any outstanding issues.

MINORITY VIEW

1. One LSUC Task Force member, Professor Constance Backhouse, had a dissenting opinion. This minority view can be summarized as follows.
2. An approval of the above motion will constitute a major and detrimental departure from an historic partnership between the Law Society and the university law schools in Canada. The Law Society first formulated a regulatory framework with respect to university legal education in 1957. It revised its standard in 1969. In both cases, the framework was based on consensual agreement between the Law Society and the legal academy.
3. In 2008, the Law Society of Upper Canada's Licensing & Accreditation Task Force ("the L&A Task Force") set forth a recommendation for a newly revised set of standards. Its position, set out at **Appendix 2**, was approved by Convocation in November 2008. This position received the unanimous approval of the Council of Canadian Law Deans, representing all sixteen common law schools and six civil law schools in Canada.
4. The Federation's Task Force on the Approved Law Degree chose to depart from the recommendations of the L&A Task Force and the unanimous recommendations of the Council of Canadian Law Deans. Contrary to what the majority of our L&A Task Force indicates above, there are many who believe that the distinctions between the Federation's Report and the original Law Society Report are significant and highly destructive of the future of legal education.
5. The six Ontario law deans have unanimously requested that our Law Society not approve the Federation's Report at this time. All six appeared before our Task Force on 28 October 2009 to request that the Law Society hold to its original position, and not endorse the Federation Report.

6. Writing on 25 November 2009, the Chair of the Ontario Law Deans, Western's Dean Ian Holloway stated that "the step that we are about to take is one that will forever alter the course of legal education in Ontario." He continued:

I can't help but note that two previous agreements of 1957 and 1969 – which together have served the cause of legal education in Canada well – were the product of the process of agreement with the Ontario Law Deans. I don't mean to belabour the point that I made at the close of our meeting, but we really have come a long way in the past decade or so in terms of our engagement with one another. I completely agree that we should strive for a consistency in the standards of quality of legal education across the country. But I continue to believe – as past experience has shown – that we are much more likely to achieve positive outcomes if we worked together, than if a report is imposed upon us from the outside.

7. On 20 November 2009, the Chair of the Council of Canadian Law Deans Brent Cotter wrote to Treasurer Derry Millar, to express the unanimous concern of all the law deans in Canada over the recommendations of the Federation's Task Force. He emphasized that there had not been sufficient consultation with the law deans.
8. The Council of Canadian Law Deans stated that the mandating of the "stand-alone" course on Legal Ethics and Professionalism is an approach that is "unprecedented and inappropriate." It questioned the description of some of the competencies – "whose meaning we have struggled to understand." It indicated that the university law schools had not been consulted on the recommendations concerning compliance. And it added that "a variety of technical or 'institutional' matters" were left unresolved, "where implementation could jeopardize various aspects of our existing programs."
9. The Council of Canadian Law Deans requested that the Law Society of Upper Canada not approve the Federation's Report without further clarification and resolution. Dean Cotter's letter concluded:

We recommend that you defer any decisions in relation to the Report and its Recommendations. We recommend that a dialogue be undertaken between the law societies and the Law Deans to work out the difficulties presented by the Task Force's Report and Recommendations and to put in place the necessary refinements and clarifications to optimize the Task Force's work and make it meaningful, effective and beneficial for legal education, for the legal profession and for the public interest.

10. The Council of Canadian Law Deans recommended the following process instead of a premature approval of the Federation Report:

There are many unresolved issues related to the Report, and we believe that these must be resolved before law societies give their imprimatur to the features of any new regulatory regime. This is again a responsibility to ensure that the model you approve best serves the public interest.

11. The Council of Canadian Law Deans recommends that “the best process to address the unresolved issues would be a joint committee of the legal profession and the Council of Canadian Law Deans, co-chaired, with equal representation from these two communities of interest.”
12. The majority of the Law Society L&A Task Force has suggested that the Federation's recommendations reflect a continued respect for academic freedom of the law schools. The law deans unanimously disagree.
13. In the Law Society's L&A November 2008 Report, Professor Constance Backhouse took the position that there were fundamental weaknesses with the approach of the Federation Task Force. All of these concerns listed below continue with respect to the final Report:

This is a “static” approach that fails to recognize that the practice of law is multi-directional, fluid, and that the pace of change has never been so fast.

The Federation Task Force failed to conduct sufficient or detailed research into the current educational offerings of law schools or to consult fully with experts in legal education prior to making its recommendations.

The proposed list of “foundational competencies” is not based upon historical or current evidence of what lawyers actually know or do, nor is the list defended by evidence-based speculation about what they will have to know or do in the future.

This approach fails to recognize the important distinctions between *pre-entry* foundations needed to register for a bar admission/licensing process, and foundations that will be acquired during the opportunities presented throughout the articling period, the bar admission/licensing process, the professional licensing exams, and the life-long continuing legal education that we know is necessary in today’s changing world.

The approach has the potential to stifle innovation, experimentation, and diversity amongst Canadian law schools.

The Federation Task Force failed to consider the resource implications of mandating new “foundational competencies.” It also failed to consider the diverse objectives of legal education, or to develop reliable measures to test the present or proposed education practices.

14. The implications of the imposition of this new regulatory regime are extremely serious. The unintended result of the new mandatory competencies is that the social justice curriculum will suffer. Elective courses in poverty law, access to justice, feminist legal issues, critical race theory, disability law, and others already face difficult battles for student enrolment. These important public interest areas of the curriculum will be further impoverished to make way for the growth in the list of mandatory competencies.
15. It is possible to create a new regulatory regime in a consensual, consultative manner. The law schools have expressed their willingness to move forward as partners in developing this important new framework. The Federation’s Report will create totally unnecessary rifts between the profession and the law schools.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

TASK FORCE ON THE CANADIAN COMMON LAW DEGREE

FINAL REPORT

October 2009

The Task Force presents this report and recommendations for consideration and discussion. The report and recommendations have not been endorsed by the governing body of the Federation and do not represent the official position of the Federation or its member law societies.

EXECUTIVE SUMMARY

The provincial and territorial law societies of Canada have the statutory responsibility to regulate the legal profession in the public interest. This responsibility includes the task of admitting lawyers to the profession. In all common law provinces and territories there are three requirements for admission to the bar: a Canadian law degree or its equivalent, successful completion of a bar admission or licensing program and completion of an apprenticeship known as articling. For applicants who receive their legal training outside Canada the determination of what constitutes qualifications “equivalent to” a Canadian law degree is made by the National Committee on Accreditation (“NCA”), a committee of the Federation of Law Societies of Canada (“the Federation”).

Unlike other common law jurisdictions, Canada has never had a national standard for academic requirements of a Canadian law degree. The closest *de facto* standard has been a set of requirements the Law Society of Upper Canada approved in 1957 and revised in 1969. These have not been reviewed in 40 years and in any event have never been explicitly accepted by other law societies.

The regulatory landscape has changed greatly since 1969. Public scrutiny of regulated professions has increased. Recent events have converged to focus particular attention on the need for transparent regulatory processes and on the implications of government initiatives to harmonize regulatory requirements across the country:

- Three provinces have enacted legislation respecting access to regulated professions that require regulators to ensure that admission processes for domestic and internationally trained applicants are transparent, objective, impartial and fair.
- The number of internationally trained applicants for entry to bar admission programs has greatly increased and the requirement for equivalency has created a need to articulate what law societies regard as the essential features of a lawyer's academic preparation.
- New law schools are being proposed for the first time in more than 25 years and recognition of their degrees as meeting the academic requirements for entry to bar admission programs requires a more explicit statement of what is required.
- Federal and provincial governments have made clear their commitment to national labour mobility and harmonized standards. A 2007 Canadian Competition Bureau (“CCB”) Study on regulated professions questioned the rationale behind the different admissions requirements of various law societies. Recent amendments to the Agreement on Internal Trade (“AIT”) have made it clear that all levels of government view professions as national entities that must have the same admission standards. Anyone certified for an occupation by a regulator in one province or territory must be recognized to practise that occupation in all other provinces and territories. The legal profession has had national mobility for a number of years, beginning with the negotiation of the

National Mobility Agreement in 2002. A national academic requirement would further enhance national mobility by providing a common, transparent method for entry to any of the common law bar admission programs in Canada.

The Federation appointed this Task Force in June 2007 to review the existing academic requirements for entry to bar admission programs and to recommend any modifications that might be necessary.

The Task Force's recommendations follow this Executive Summary. The Task Force recommends that the Federation adopt a national academic requirement for entry to the bar admission programs of the common law jurisdictions. The intent behind developing a requirement that applies equally to applicants educated in Canada and internationally is to ensure that all those seeking to enter bar admission programs in Canadian common law jurisdictions have demonstrated certain essential and predefined competencies in the academic portion of their legal education.

In developing the recommended content of this national requirement the Task Force has had the benefit of input from the legal academy, the profession and other interested parties. In particular, the Council of Canadian Law Deans has been of considerable assistance as the Task Force has addressed the difficult challenge of creating a national requirement while at the same time preserving the flexibility Canadian law schools require to continue the innovation in legal education that positions graduates for valuable and diverse roles in society.

Accrediting bodies in jurisdictions similar to Canada commonly use one of two approaches to determine that an applicant for admission meets the necessary academic requirements: successful completion of specified courses or passage of a substantive law bar examination. In recent years, however, there has been increasing focus on learning outcomes, rather than prescriptive input requirements. The Task Force is of the view that this focus represents the appropriate regulatory approach.

Accordingly, the Task Force proposes a national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education.

The skills competencies the Task Force recommends are in problem solving, legal research and oral and written communication skills. These skills are fundamental to any work a lawyer undertakes in the profession.

In general the Task Force recommends that the Federation leave it to law schools to determine how their graduates accomplish the required competencies. It has concluded, however, that the Federation should require applicants seeking entry to bar admission programs to demonstrate that they have had specific instruction in ethics and professionalism, in a stand-alone course dedicated to the subject. Ethics and professionalism lie at the core of the legal profession. It is important that students begin to appreciate this early in their legal education.

In determining the required substantive legal knowledge, the Task Force considered the continued relevance of the current first-year curriculum of the 16 law schools offering a common law degree, the importance of students having foundational knowledge in both public and private law, the competency research undertaken by various law societies in Canada, the regulatory approach in other comparable common law jurisdictions and the importance of ensuring that the requirements do not interfere with the flexibility and innovation in current law school education.

The Task Force's recommendations reflect its view that every Canadian law school graduate entering a bar admission program or a recipient of an NCA Certificate of Qualification should understand,

- the foundations of law, including principles of common law and equity, the process of statutory construction and analysis and the administration of the law in Canada;
- the constitutional law of Canada that frames the legal system; and
- the principles of criminal, contract, tort, property and Canadian administrative law and legal and fiduciary principles in commercial relationships.

In addition to the competencies set out in the national requirement the Task Force recommends that law schools meet certain institutional requirements, as follows:

- The prerequisite for entry to law school must at a minimum include successful completion of two years of postsecondary education at a recognized university or CEGEP, subject to special circumstances.
- The law school's program for the study of law must consist of three academic years or its equivalent in course credits.
- The program of study must consist primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
- The law school must be adequately resourced to meet its objectives.
- The law school must have appropriate numbers of qualified academic staff to meet the needs of the academic program.
- The law school must have adequate physical resources for both faculty and students to permit effective student learning.
- The law school must have adequate information and communication technology to support its academic program.
- The law school must maintain a law library in electronic and/or paper form that permits it to foster and attain its teaching, learning and research objectives.

The national requirement will be applied to all applicants for entry to bar admission programs whether educated in Canada or internationally.

Where a Canadian law school offers an academic and professional legal education that meets the national requirement, its graduates will have met the requirements for entry to bar admission programs.

For applicants trained outside Canada the Task Force recommends that the NCA continue to assess them individually. The national requirement will provide appropriate guidance and result in NCA applicants being assessed in a manner consistent with the requirements for graduates from Canadian law schools.

The Task Force also recommends that the Federation apply the national requirement when considering proposals for new Canadian law schools.

The Task Force recommends that Canadian law school compliance with the national requirement, including the competencies, be determined by a standardized annual report. Each law school Dean will complete the report confirming that the law school has conformed to the academic program and learning resources requirements and explaining how the program of study ensures that each graduate of the law school has met the competency requirements.

If the law societies of Canada approve these recommendations, the Task Force recommends that the Federation establish a committee to implement them.

The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking to enter a bar admission program must meet the national requirement. This transition period accommodates students who have already begun their studies, applicants currently in the NCA process and law schools that will require modifications to their programs.

The proposed national requirements and the Task Force's more detailed discussion of the issues follow this Executive Summary.

THE TASK FORCE'S RECOMMENDATIONS

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

A. Statement of Standard

1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;*
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and*
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.*

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or*

- b. *possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.*

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

1.2 Legal Research

The applicant must have demonstrated the ability to,

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

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- a. communicate clearly in the English or French language;*

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

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;*
- b. the ability to identify and address ethical dilemmas in a legal context;*
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*
 - i. circumstances that give rise to ethical problems;*
 - ii. the fiduciary nature of the lawyer's relationship with the client;*
 - iii. conflicts of interest;*
 - iv. duties to the administration of justice;*
 - v. duties relating to confidentiality and disclosure;*
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.*

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of

the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships.*

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic

and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. Academic Program:

1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.

1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

1.3 Holders of the degree have met the competency requirements.

1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.

1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.

2. Learning Resources:

2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

2.3 The law school has adequate information and communication technology to support its academic program.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the

Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.

6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.

THE REPORT

INTRODUCTION

The legal profession in Canada is self-regulating. Provincial and territorial legislation has for decades and in some cases centuries granted law societies responsibility to admit applicants to the profession, establish codes of professional conduct and standards of competence, and discipline lawyers when they fall below acceptable standards.

Law societies regulate lawyers “in the public interest.” In the 21st century self-regulation is neither a static concept, nor one that can or should be taken for granted. The context within which the legal profession operates has changed significantly since the days when the members of the profession were homogeneous in make-up and relatively few in number, the profession’s monopoly was not challenged and consumer awareness had not become an important factor in the provision of legal services. Today, regulators must pay attention to the internal and external pressures on self-regulation that will affect its future operation.

The legal profession in Canada remains virtually the last in the common law world to be self-regulating.¹ Across Canada regulators are under greater government scrutiny than ever before. The heightened scrutiny is not directed specifically at the legal profession, but to all professions as governments determine their own public interest priorities and consider ways to create a more seamless pan-Canadian approach to governance.

Governments are increasingly responding to public demands for transparency, fairness, objectivity and consistency in decision making whether it be at the government level or by statutory authorities. The passage of fair access to professions legislation by three provincial governments, the 2008 national amendments to the Agreement on Internal

¹ The nature of self-regulation of the legal profession in Canada has evolved over a long period. It is now commonplace for law society benchers (directors) to include public representatives, often referred to as “lay benchers” who participate as full voting members. Nevertheless, in all provinces and territories the majority of benchers are lawyers that the profession elects to regulate lawyers in the public interest, independent of government control, to ensure that the public continues to be served by an independent bar.

Trade (“AIT”) with a commitment to full labour mobility across Canada by August 2009, and the recently undertaken provincial and territorial agreement to develop a pan-Canadian framework for foreign qualification recognition demonstrate the commitment to transparent and accessible process that governments have made and expect regulators to meet. Moreover, while regulators have been consulted on these developments, their influence has been limited to discussing details, not to influencing the policy direction underlying the initiatives.

Today and in the future, self-regulation requires regulators to anticipate areas of government and public scrutiny and changing societal priorities and ensure that their processes withstand that scrutiny. The Federation’s 2002 National Mobility Agreement (“the NMA”) is a good example of what can be achieved by changing the understanding of the public interest and developing policy to address it. Because of the NMA, law societies were already compliant with the amendments to the AIT.

The establishment of this Task Force to consider the development of a national requirement for the entry of applicants to provincial and territorial law society bar admission programs is in large part a response to the heightened government scrutiny of regulators. It also arises from a realization that there are areas of regulation in which law societies have done little recent policy work to reflect the changing regulatory landscape. In part this inactivity has been reflective of the historic isolation of law societies from one another. National regulatory projects were for decades quite limited.

Yet law societies in common law jurisdictions in Canada share the same values and responsibilities.² All law societies regulate their members in the public interest, which includes responsibility for the competence, integrity, standards of learning and professional ethics of those they admit to the profession and a commitment to access to legal services. Their codes of professional conduct reflect similar duties and responsibilities to the court, to clients and to the public. Every law society requires new lawyers to complete a pre-call program, including articling, prior to admission. Despite

² Law societies in common law jurisdictions also share many of these same values with the Barreau du Québec; however because of somewhat different legal systems, this Task Force’s mandate is to address requirements only as they apply to entry into the law societies of common law jurisdictions.

features that reflect their unique provincial or territorial circumstances all law societies regulate on the basis of these shared values, which render lawyers from common law jurisdictions more similar than not. Increasingly, law societies recognize the need to address the shared nature of their responsibilities in formal ways to ensure that the profession keeps ahead of a constantly changing landscape and regulation continues to reflect the public interest.

The enhancement of the Federation's role and the advent of national mobility have engendered greater interaction and cooperation across the country. There are now good reasons to reflect a national perspective whenever possible and to articulate it in a transparent, fair and objective manner.

In June 2007 the Federation appointed this Task Force with a mandate to review the criteria currently in place establishing the approved LL.B/ J.D. law degree for the purposes of entry to law societies' bar admission/ licensing programs and, if appropriate, to recommend changes. The mandate includes considering the implications of any changes for the National Committee on Accreditation ("the NCA") requirements for granting a certificate of qualification to internationally educated applicants.

The Task Force has met over the last two and a half years, has provided three reports and has undertaken a consultation process. It reported on the results of the consultation process in March 2009 and has taken the comments it received both in writing and in meetings into account in reaching its recommendations. The information on its process is set out at **Appendix 1**.

This is the Task Force's final report, with its recommendations, which it presents to Federation Council for its consideration.

THE ROLE OF LAW SOCIETIES IN REGULATING ENTRY TO THE PROFESSION

Law societies in Canada are responsible for determining who is admitted to the profession. The responsibility is a significant one, because each decision to admit an

applicant tells the public that the newly licensed lawyer has met high standards of learning, competence and professional ethics. In the context of lawyer mobility and the AIT, the admission of a lawyer in one common law jurisdiction in Canada is effectively admission in every other common law jurisdiction.

Law societies in the common law provinces carry out their responsibility by requiring candidates for admission to earn a Canadian common law degree or its equivalent, to successfully complete a law society bar admission program³ and to complete a period of apprenticeship, known as articling. Currently, the successful attainment of a Canadian common law degree⁴ satisfies the regulators' academic requirement. The bar admission and articling stages provide practical training for the practice of law.

To assess the qualifications of persons who receive their legal training outside Canada, the Federation established the NCA. The NCA determines what additional requirements the applicant must meet to achieve equivalency with the Canadian LL.B./J.D. degree. When satisfied that equivalency has been achieved, the NCA issues a Certificate of Qualification that law societies generally use to determine whether an applicant meets the academic requirements for entry to a bar admission program.

The concept of an approved Canadian law degree developed in large part as a result of the debate in Ontario in the 1940's and 1950's over control of legal education. In 1957 the benchers of the Law Society of Upper Canada agreed that graduates "from an approved law course in an approved university in Ontario" would meet the academic requirements for entry to the bar admission course. This resulted in the relatively quick development of law schools at Queen's, Western, Ottawa and Windsor, the further development of the law faculty at the University of Toronto, and ultimately the relocation

³ The term "bar admission program" refers to and includes all the pre-licensing processes leading to admission to the profession in the common law provinces and territories.

⁴ In some provinces, the academic requirement is expressed simply as "a Canadian common law degree" (e.g. Law Society of Alberta - Rule 50.2; Law Society of British Columbia, Rule 2-27(4)(a): "successful completion for the requirements for a bachelor of laws or the equivalent degree from a common law faculty of law in a Canadian university"); in others, the degree must be from a "recognized school of law" (e.g. Saskatchewan – www.lawsociety.sk.ca/newlook/Programs/admission.htm) or from an "accredited law school" (e.g. Ontario - Law Society of Upper Canada By-Law 4, section 9.).

of the original Osgoode Hall Law School to a university setting at York University in 1969. The Law Society of Upper Canada subsequently expanded the scope of acceptable law programs to include law schools throughout Canada and, over the next two decades, proceeded to approve the law degrees of all 16 Canadian common law faculties for entry to its bar admission program. In 1984, Kenneth Jarvis, while Secretary of the Law Society of Upper Canada, described this process in a letter to the Federation, set out at **Appendix 2**.

The Law Society of Upper Canada's 1957/69 requirements defined an approved law faculty for the purpose of entry of their graduates to the bar admission course. The Law Society originally prescribed eleven mandatory courses that every student was required to take and a number of additional courses that the schools were required to offer. In 1969, as a result of a request by the Ontario Law Deans for greater flexibility in program development, the Law Society amended the standards, reducing the number of required courses from eleven to seven ("the 1957/69 requirements".) The 1957/69 requirements are set out at **Appendix 3**.

There has never been a national requirement for approval of law programs or law schools in Canada. For a half century no law societies in common law jurisdictions have analyzed the criteria governing entry of a graduate from a Canadian common law school to their bar admission programs. Moreover, neither the Law Society of Upper Canada nor any other law society appears to have updated the 1957/1969 requirements.

In 1976, 1979 and 1980 three new law schools opened their doors at Victoria, Calgary and Moncton. Because there was no national law program approval body, each provincial law society had to consider whether to recognize law degrees from these institutions as meeting the academic requirements for entry to their respective bar admission programs.

It is perhaps not surprising that law societies have never established national requirements for entry to their bar admission programs. Until recently law societies operated in relative isolation from one another, preoccupied with internal regulatory

issues. They spent little time developing national approaches despite their common responsibilities. Further, unlike the United States where there are hundreds of law schools, there are only 16 in Canada that grant common law degrees. There has not been a new school approved in 29 years. While the existing law faculties were established under differing circumstances and vary in their missions, objectives, size, access to resources and other features, law societies have been satisfied that they all provide quality programs. This remains the case today.

Law societies respect the academic freedom that law schools vigorously defend. There is a strong tradition within the legal education system, particularly in North America, to view law school education as not simply a forum for training individuals to become practitioners of a profession, but also as an intellectual pursuit that positions its graduates to play myriad roles in and make valuable contributions to society.

Why in the face of this respect for law schools' missions and the quality of law schools and their faculties would the Federation establish a national requirement that graduates of these law schools will be required to meet to enter bar admission programs? Why not assume that the status quo continues to be sufficient?

The regulatory landscape has changed greatly since law societies last addressed this issue in 1969. Public scrutiny has increased, with recent events converging to focus particular attention on the need for transparent processes and national regulatory requirements.

Fair Access Legislation and National Committee on Accreditation

Three provinces have enacted legislation respecting fair access to regulated professions that require regulatory authorities to ensure that their admission processes for domestic and internationally trained candidates are transparent, objective, impartial and fair.⁵ The legislation includes provisions for ongoing monitoring of regulators' compliance with the requirements. To the extent a regulator has delegated the

⁵ *Fair Access to Regulated Professions Act*, S.O. 2006, c.31 (Ontario); *The Fair Registration Practices in Regulated Professions Act*, S.M. 2002, c.21 (Manitoba); and *Fair Registration Practices Act*, S.N.S. 2008, .38 (Nova Scotia – to be proclaimed.)

assessment of international qualifications to a third party it must ensure that the third party complies with the requirements of the fair access legislation.

Law societies have delegated the responsibility for evaluation of international credentials to the NCA. It evaluates the credentials to determine the scope and extent of any further legal education that in its opinion an applicant must complete *to equal the standard of those who have earned a Canadian LL.B./ J.D. degree*. The difficulty with this test is that there is no articulated national standard or requirement for the Canadian LL.B./J.D. degree against which the NCA requirements can be measured.

Given the need to meet the fair access standards of transparency, objectivity, impartiality and fairness a national requirement is necessary for the regulation of entry to bar admission programs for both domestic and international candidates.

Proposals for New Canadian Law Faculties and Law Degree Granting Institutions

Until 2007 there had been no proposals for new faculties of law in Canada for over 25 years. Within established faculties of law there has been only a limited increase in the number of law school places. As the number of applicants to law schools has continued to increase, some unsuccessful applicants have attended law schools elsewhere in the world. Applicants who earn law degrees outside Canada and wish to return to Canada must go through the NCA process for an assessment of their credentials.

The increased number of law school applications has given rise to at least two developments. The first, as described above, is the increase and change in the nature of some of the candidates seeking evaluation through the NCA. To address the NCA requirements for these students some international law schools have begun tailoring their curriculum to teach Canadian law.

The second development is the renewed interest in Canada in the establishment of new law schools, either as part of a university or within a private, degree granting institution. The first proposals came from Ontario in 2007 from at least two universities, with a number of other universities expressing interest. The government of Ontario announced

in 2008 that it would not fund new schools at this time, but the issue has not receded. British Columbia recently approved the creation of a law school at Thompson Rivers University in partnership with the Faculty of Law at the University of Calgary. In addition, a private provincially approved degree granting institution in British Columbia has recently submitted an application for authority to offer a J.D. degree.⁶

New law schools will want to ensure that their graduates are eligible to enter bar admission programs in any common law jurisdiction in Canada. The adequacy and portability of their law degree for this purpose will be as essential to them and their students as it is to the already established law faculties. A clearly articulated national requirement is necessary to ensure that new Canadian law schools know what they must do to enable their graduates to enter bar admission programs.

National Mobility of Lawyers and Government Harmonization Initiatives

The legal profession in Canada has had open and transparent national mobility for a number of years, beginning with the negotiation of the NMA in August 2002.⁷ In addition, national labour mobility is now a clear governmental objective, both federally and provincially.

At the Council of the Federation meeting in July 2008 provincial and territorial premiers emphasized the critical importance of full labour mobility for all Canadians and the need to amend the AIT by January 2009. The premiers stated that the proposed amendments should provide that any worker certified for an occupation by a regulatory authority of one province or territory be recognized as qualified to practise that occupation in all other provinces and territories. The premiers directed that any exceptions to full labour mobility would have to be clearly identified and justified as necessary to achieve a “legitimate objective,” a term defined in the AIT. Governments would share their list and post these on a public website. Full labour mobility was to have been achieved by August 2009.

⁶ Learning Wise Inc. doing business as University Canada West.

⁷ Federation of Law Societies of Canada. National Mobility Agreement, August 16, 2002. www.flsc.ca/en/pdf/mobility_agreement_aug02.pdf

Despite provincial and territorial regulation of professions, the amendments to Chapter 7 of the AIT have made it clear that all levels of government view the professions as national entities that must have the same admission standards. Any differences in provincial approach must be harmonized to permit seamless mobility. Establishment of a national requirement for entry to bar admission programs is in keeping with this harmonized approach.

Canadian Competition Bureau (“CCB”)

In a 2007 study of a number of professions, the CCB pointed to a number of areas in which it believed the legal profession’s practices were restrictive. It noted, for example, variations in the length of bar admission and articling requirements across the country and could not see a justification for the differences. The CCB study is a further example of an external pressure for a national approach to professional regulation that is uniform, transparent and clear.

Law societies stand between law schools that seek autonomy to fulfill their academic objectives unimpeded and governments that seek accountability, transparency and consistency in the regulation of the profession. Law societies must seek a balance that addresses both these imperatives, always keeping the public interest in mind.

The development of regulatory requirements for entry to bar admission programs involves a balancing of considerations, because what regulators prescribe as a prerequisite for those seeking entry to bar admission programs will also *de facto* be part of the “exit” requirements for those graduating from law schools. Accordingly, the Task Force’s recommendations reflect its understanding of why requirements are necessary and what those requirements should be, while paying attention to the legitimate concerns of the legal academy that the requirements support quality, innovation and excellence in Canadian law schools.

This balancing is a complex process because while law societies and the legal academy have overlapping interests, they also have, in part, different priorities and requirements.

These include statutory obligations in the case of regulators, academic imperatives in the case of the schools and different external pressures on each group.

The Task Force's recommendations also address the transparency and fairness of NCA processes and provide guidance for proposals for new Canadian law schools.

INTERNATIONAL APPROACHES TO ENTRY INTO THE LEGAL PROFESSION

Each jurisdiction develops regulatory standards that suit its unique circumstances.

Appendix 4 provides a comparative international snapshot of a number of approaches to determining requirements to be met by candidates seeking to become lawyers. The Task Force has noted that many other jurisdictions are undergoing a re-examination of legal education and accreditation issues, in some cases making changes, in others commencing studies of possible models to pursue. As well, a number of Canadian law schools have made changes to their first year curricula, often raising issues similar to those the Task Force has discussed, sometimes from a different perspective.

The extent to which issues respecting appropriate approaches to legal education, standards and models for regulation are being actively considered illustrates the timeliness of the Task Force's work. A number of developments provide useful perspectives on a model that would best suit the Canadian legal education and regulatory context. In particular, the Task Force has noted the interplay of standards, outcome measurements and accreditation across a number of jurisdictions.

- In the United States the approved law school approach has tended to focus on the “bricks and mortar” features (input measures such as libraries, teaching staff, classroom space, etc.), rather than learning outcomes. The key output measures have traditionally been bar passage rates and job placement. In July 2008 an American Bar Association (“ABA”) Task Force on Outcome Measurements released its report in which it recommended what could amount to a sea change in accreditation approval processes. It recommended that current ABA Accreditation Standards be re-examined and reframed as needed “to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”⁸ The report pays particular attention to the

⁸ American Bar Association. Section of Legal Education and Admissions to the Bar. Report of the Outcome Measures Committee. (Professor Randy Hertz, Chair). July 27, 2008, p.1 (“Outcome Measures Report”).

extent to which other professions have developed outcome measurement standards, reflecting the importance of a professional education that facilitates graduates' ability to practise their profession.

- The Australian model of regulation is somewhat similar to the current Canadian approach, with no national accreditation system. Australia does, however, have national curriculum requirements (Priestley 11) and the Council of Australian Law Deans has recently agreed in principle on overall national standards that could ultimately become accreditation standards.⁹ These address a wide range of matters, including academic autonomy, the law course, assessment, academic staff, the law library or collection, resources and infrastructure, course evaluation, nexus between teaching and research, governance and administration and continuous renewal and improvement. The standards are articulated at a broad level, leaving a great deal of flexibility for individual schools.
- The England and Wales model combines input and output measures, as well as defining, through the Joint Statement on Qualifying Law Degrees of the Law Society of England and Wales and the General Council of the Bar, the conditions a law degree course must meet to be termed a “qualifying law degree.” The Law Society of England and Wales has recently revised requirements for its Legal Practice Course to describe learning outcomes for what a successful candidate should be able to *do* on conclusion of the course.

In considering what requirements graduates with Canadian LL.B./ J.D. degrees should have to meet to be eligible for entry to law society bar admission programs the Task Force has benefited from this comparative analysis and has fashioned an approach that reflects Canada's legal education and regulatory context.

DEVELOPING A CANADIAN NATIONAL REQUIREMENT FOR ENTRY TO BAR ADMISSION PROGRAMS

An examination of international approaches to entry to the legal profession reveals that Canada appears to be unique among comparable common law jurisdictions in not having national standards or requirements for the academic prerequisite for admission to the profession, beyond requiring an LL.B./J.D. degree. The final report of the Council of Australian Law Deans in describing international requirements accurately summarized the Canadian regulatory environment:

⁹ Council of Australian Law Deans. *Standards for Australian Law Schools-Final Report*. Prepared by Christopher Roper and the CALD Standing Committee on Standards and Accreditation. March 2008 (“the CALD Report 2008”).

There are no Canadian national standards as such. It has been many years since standards for Canadian law schools have been evaluated. The setting of standards for Canadian law schools, or more accurately the requirements for call to the bar, is a responsibility of individual Canadian law societies, as they set entry requirements for the respective provincial or territorial bar admission process.¹⁰

For the reasons discussed earlier in this report and in its previous reports, the Task Force is satisfied that there should be a national academic requirement for entry to bar admission programs of the common law jurisdictions. The intent behind developing a requirement that applies equally to applicants educated in Canada and internationally is to ensure that all those seeking entry to bar admission programs in Canadian common law jurisdictions have demonstrated certain essential and pre-defined competencies in the academic portion of the legal education or its equivalent through the NCA.

Such a requirement would address the issues identified earlier in this report respecting transparent regulation, fair access to regulated professions, criteria to be applied for new law school applications, AIT and CCB considerations and government scrutiny of regulators.

Anything short of a national solution that addresses these issues in a comprehensive way will result in the continuation of a patchwork approach that is neither in the public interest nor adequately attuned to the external forces that are affecting self-regulation.

For a national approach to succeed, provincial and territorial law societies must think nationally, as they did when adopting the NMA, the anti-money laundering rules and client-identification rules. Although a commitment to a national approach will on occasion require compromise, law societies have enormous capacity to work together in the interests of the profession. The Federation's increasing commitment to national regulatory approaches is also reflected in a new Task Force the Federation has recently established to develop national standards for admission to the profession. Like this Task Force's work on a national requirement for entry to bar admission programs, the goal of that Task Force is to enhance transparent regulation, reflecting the common responsibilities law societies share.

¹⁰CALD Report 2008, p. 38.

In developing its recommendations the Task Force has been very aware of the potential effect of a national requirement for entry to bar admission programs on law school education.

The Council of Canadian Law Deans (“the Council”) has provided the Task Force with important assistance both through the participation of its working group of three Law Deans and through its reports and correspondence to the Task Force, most recently its letters of June 1 and June 29, 2009, set out at **Appendices 5** and **6**. The Task Force is encouraged by the Council’s June 1, 2009 response to the general direction of the Task Force’s approach. The Task Force has found the Council’s perspective very helpful as it has finalized its recommendations.

Members of faculty at a number of law schools have also given the Task Force valuable insight into the pedagogical implications of the options it has been considering in the course of its work.

The Task Force believes that its recommendations balance law societies’ regulatory responsibilities with the importance of academic freedom and learning in law schools.

THE TASK FORCE’S RECOMMENDED APPROACH

Examination and Course Listings Options

Accrediting bodies in jurisdictions similar to Canada commonly use two approaches to determine that an applicant for admission meets the necessary academic requirements: passage of a bar examination, without requiring that applicants take certain courses in law school, or successful completion of specified courses.

The tradition in the United States has been to test a candidate’s academic qualifications in a state bar examination. The bar passage rate has been one of the main criteria the ABA accreditation process has examined in evaluating the success of law schools.

While there is no suggestion that the United States is moving away from state bar examinations, the limitations of the approach are being examined, particularly in terms

of their value in accrediting law schools. The American system is different from Canada's in that law school is the only preparation for practice – there are no articling or bar admission programs.

In its September 2008 consultation paper the Task Force considered the examination option and noted the following:

This option appears to be transparent and objective, easily developed nationally and entirely within the control of law societies. Potentially it may apply to both domestically and internationally educated candidates. For those who currently question whether students graduating from law schools are adequately prepared to practise law there may be comfort that an examination system serves as a check and balance.

The Task Force is of the view, however, that there are a number of issues that arise with this option that require consideration. Criticisms of the American examination model, for example, include the view that the examinations come to “drive” the legal education process. It has been suggested that what examination passage denotes primarily is the ability to pass an examination, rather than proof of the acquisition of the knowledge, skills and abilities that a lawyer requires to practise law.

Another possible disadvantage of this approach is that it adds another layer to law students' education.

During the consultation process some input suggested that this approach is preferable to an approved law degree requirement since law societies would not be “dictating” curriculum to law schools. Other input agreed with the Task Force concern that as students become preoccupied with ensuring that they pass this additional hurdle they will demand that their law schools teach to the examinations.

The Task Force believes there is a better approach than prescribing a national entrance examination to bar admission programs. The focus of this approach is on education rather than testing. With cooperation and collaboration between law societies and law schools the goals and mandates of both groups can be achieved, benefiting students and ultimately the public.

The Task Force also considered whether to specify a list of law school courses that a graduate must have taken to be eligible for entry to a bar admission program. In

England and Wales, Australia and New Zealand law societies specify a compulsory course curriculum. The latter two jurisdictions each publishes a general course syllabus of required courses.¹¹ The Law Society of Upper Canada's 1957/1969 requirements took a similar approach, specifying both required courses an applicant must have taken and optional courses that law schools were required to offer.

This approach reflects what until recently has been a focus on the topic areas a student's education must address, rather than on what the student has learned and can do. Increasingly, however, this traditional approach is being replaced by consideration of those competencies a student should have acquired that reflect the knowledge, skills and attitudes necessary for an applicant seeking admission to the legal profession. The course based approach offers little guidance on the candidate's capabilities. From the public's perspective what matters is what lawyers are able to do.

Competency Requirements

The Task Force is satisfied that law school graduates seeking entry to bar admission courses should have acquired competencies in fundamental areas of substantive knowledge, legal skills and professionalism and ethics. This is the preferred approach for a national requirement.

Establishing requirements in all three categories reflects their equal importance in the development of lawyers who are competent to serve the public. The Law Society of Upper Canada's 1957/69 requirements considered only substantive law, reflecting the priorities of all regulators and law schools at that time. In the latter decades of the 20th-century both law schools and law societies have also delivered skills education and training, with law schools being particularly qualified to offer such instruction in legal research and writing. Many schools offer clinical programs, skills-based courses and pro bono opportunities that enable students to develop the skills that will serve them following graduation.

¹¹ See Appendix 4.

Relationships between individuals, the state, and societal and commercial entities are at the heart of law. A lawyer's fundamental role is to understand those relationships, to identify the legal issues and problems that arise from them and to craft solutions. The lawyer's role may arise in traditional private practice while serving the needs of a client, as corporate counsel, in government or clinic practice, or in myriad other contexts. Every context and every issue requires the lawyer to bring to bear a wide range of skills, knowledge and ability. The lawyer's development is never static and must evolve, adapt and expand wherever the lawyer works and in the face of a constantly changing legal landscape.

To perform their roles lawyers must know the law, whether common law or statute. This does not mean that lawyers will always know all the law applicable to a particular problem or issue, but does mean they must understand the basic legal concepts that will be applicable and will guide them in finding the law that is specific to the problem or issue at hand.

It is not reasonable to expect that law schools will graduate students who are fully capable of providing competent professional services to clients in all matters. Clearly, the profession must continue to play a role in bridging the gap between law school and formal licensing of lawyers. However, through the professional legal education students receive in law school, they should acquire foundational competencies necessary for the practice of law.

In the past decade several law societies have developed competency frameworks to support their bar admission requirements. The most detailed is the Law Society of Upper Canada's entry-level competencies, developed for its licensing process after a lengthy consultation with the profession, focusing on the early years of practice.¹² The Law Society of Upper Canada highlights competencies in ethical and professional responsibility, knowledge of the law, client relations, and issue identification.

¹² Law Society of Upper Canada. Licensing Process. Entry Level Solicitor Competencies by Category; Entry Level Barrister Competencies by Category. www.lsuc.on.ca. (lawyer licensing)

The law societies of British Columbia, Alberta, Saskatchewan and Manitoba have taken a similar approach, identifying competencies in lawyering skills, practice and management skills, and ethics and professionalism that entry level lawyers require. British Columbia applies these competencies in its bar admission program, the Professional Legal Training Course.¹³ Alberta, Saskatchewan and Manitoba apply the competency framework in their common bar admission program through the Centre for Professional Legal Education (CPLED). Nova Scotia has adapted the framework for use in its bar admission course and New Brunswick will implement a similar competency framework in 2010.

In Australia admission to practice is governed by competency standards developed in 2000 by the Australasian Professional Legal Education Council (APLEC) and the Law Admissions Consultative Committee. These standards describe the performance required in three key areas: skills, practice areas and values (i.e. ethics and professional responsibility).

In the United States the University of Wisconsin Law School Assessment 2000 Report was one of the early detailed examinations considering a competency approach to education. It reviewed the skills and knowledge lawyers need in their first five years of practice.¹⁴ Most recently in 2008, the Legal Education Section of the ABA's Output Measures Committee has urged a reconsideration of that body's accreditation process in favour of an output-based process.¹⁵ In commenting on the Committee's interim report the Society of American Law Teachers noted,

In assessing whether law schools are providing students with quality legal education, the ABA should consider the wide range of competencies important to lawyers... the competencies that the ABA should evaluate are the skills, knowledge and values that are important to the profession and go far beyond what is currently valued and measured.¹⁶

¹³ Canadian Centre for Professional Legal Education 2004. *Competency Profile for Entry Level Lawyers*. Calgary, Alberta.

¹⁴ University of Wisconsin Law School. Assessment 2000 Summary Report. www.provost.wisc.edu/assessment/LawSchool2000_report.pdf

¹⁵ Outcome Measures Report. July 27, 2008.

¹⁶ Society of American Law Teachers Statements to the ABA Outcome Measures Committee, February 1, 2008, pp. 1, 5 and 6. See Also July 21, 2008.

In the Carnegie Foundation's report, *Educating Lawyers: Preparation for the Profession of Law* the authors consider the appropriate focus of academic preparation for the profession of law to be an integrated three part curriculum consisting of,

- (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth;
- (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and
- (3) a theoretical and practical emphasis on inculcation of the identity, values and dispositions consonant with the fundamental purposes of the legal profession.¹⁷

Skills Competencies

In recommending competencies in certain skills the Task Force has focused on those skills areas that law students can reasonably be expected to acquire during the academic component of their education. This is not to suggest that the legal academy should be expected to provide the only education in this area, rather that the three years of the academic program are an appropriate period in which to begin to inculcate these skills.

The Task Force has developed the recommended skills competencies with reference to both the competency work that individual law societies have done and the significant learning that is currently being undertaken in Canadian law schools in these areas.

The three skills areas that the Task Force's recommendations address are problem-solving, legal research, and oral and written legal communication. In its view these skills are fundamental to any work a lawyer undertakes in the profession. In describing these competencies the Task Force has kept in mind that a national requirement is to address what an applicant must demonstrate for entry to a bar admission program not for entry to the profession. Competency development is a progressive process with law school being the first step in career long learning.

¹⁷ William M. Sullivan, et al. *Educating Lawyers: Preparation for the Practice of Law*. Carnegie Foundation for the Teaching of Law. 2007, p.194.

The Task Force believes that all 16 Canadian common law schools currently provide sufficient instruction in these recommended skills areas to meet the competency requirements.

By articulating these skills requirements the Task Force believes that law societies would make an important statement that lawyers should not only know the law, but should to have the capacity and skill to use what they know and be able to serve the public.

Ethics and Professionalism

The Task Force has concluded that law societies should require applicants seeking entry to a bar admission program to demonstrate that they have had instruction in ethics and professionalism in the Canadian legal context. During the Task Force's consultation no one suggested that studying ethics and professionalism should not form a fundamental component of an individual's legal education. Rather, the debate has centred on whether the Task Force should recommend that applicants must have taken a stand-alone course in the subject.

In general the Task Force has concluded that it should be left to the law schools to determine how their students satisfy the competency requirements. It has not recommended that regulators specify courses, number of credit hours, content, delivery method, or assessment. This allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives, while at the same time meeting the regulators' requirements that will allow their graduates to enter bar admission programs.

The one exception to this recommended approach is ethics and professionalism. After careful consideration the Task Force recommends a stand-alone ethics and professionalism course for each student who seeks entry to a bar admission program.

The Law Society of Upper Canada's 1957/69 requirements said nothing about instruction in legal ethics or professional responsibility and as late as 1985, only two of the country's 16 law schools had a compulsory legal ethics course in their programs.

Approximately 18 years ago, the Federation and the Council of Canadian Law Deans jointly sponsored an important study by W. Brent Cotter, now Dean of the University of Saskatchewan College of Law, that emphasized the importance of professional responsibility instruction as a component of legal education and recommended a coordinated curriculum. This marked the opening of a national conversation that continues today.¹⁸

As an academic discipline, legal ethics has more recently become a significant area of scholarly pursuit. In an article written in 2007 entitled "Taking Responsibility: Mandatory Legal Ethics in Canadian Law Schools," authors Richard Devlin, Jocelyn Downie and Stephanie Lane begin by saying,

In an era when professionals, bar societies and judges are often heard lamenting the decline in legal professionalism, mandatory legal ethics and professional responsibility instruction in law schools would seem to be an obvious, and obviously appropriate, response.¹⁹

While the authors recognize institutional reluctance for any further mandatory courses to be added to the law school curriculum, they agree with the position that there is more evidence on the effectiveness of professional responsibility instruction than there is on the effectiveness of most professional education.²⁰

In the past decade, Canadian law schools have increased instruction in the subject. In a survey of law schools it has been reported that 11 of the 16 law schools have a compulsory course in legal ethics, though with various descriptions.²¹ The first

¹⁸ W. Brent Cotter. *Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education*. Federation of Law Societies of Canada's Joint National Committee on Legal Education and the Council of Canadian Law Deans, 1992.

¹⁹ *The Advocate*. Vol. 65, part 6. November 2007, p.761 at 762.

²⁰ *Ibid.* p.766.

²¹ W. Brent Cotter and Eden Maher, "Legal Ethics Instruction in Canadian Law Schools: Laying the Foundation for Lifelong Learning in Professionalism." February 20, 2009 (publication pending). Originally prepared for the Chief Justice of Ontario's Advisory Committee on Professionalism – Symposium on Lifelong Learning in Professionalism ("Cotter and Maher").

casebook on Canadian legal ethics was published last year for use in law school education.

In a recent article on the subject, Dean Cotter and Eden Maher conclude that an exclusively pervasive method of instruction is not sufficiently effective to meet the educational objective.²²

The increasing importance of an understanding of ethical issues may be illustrated by the fact that the Supreme Court of Canada has decided more cases on the subject of solicitor-client privilege in the past decade than it had done previously in its entire history. It has

also decided three significant conflict of interest cases in the past 15 years that have affected practice in all parts of Canada.²³

The Task Force is convinced that dedicated instruction on ethics and professionalism, beginning in law school is essential. It should address both the broad principles of professionalism and the ethical issues with which lawyers must contend throughout their careers, including conflicts of interest, solicitor-client privilege and the lawyer's relationship with the administration of justice.

With the exception of the Law Society of Upper Canada, all the law societies that provided input to the Task Force supported a stand-alone course in professional responsibility. The Task Force has reviewed the Law Society of Upper Canada's submission on this topic. One of the points that Law Society makes is that the Task Force's original characterization of the competency as "professional responsibility" was too narrow and could be restrictively interpreted to refer specifically and only to the Rules of Professional Conduct. It suggests that learning about the rules is better left to the law societies in bar admission programs, articling and professional development. The Task Force agrees that the better description of the competency it contemplates is "ethics and professionalism" and it has made that change to its final recommendations.

²² Cotter and Maher, 2008.

²³ This information was provided to the Task Force in a helpful submission from Dean W. Brent Cotter during the consultation process.

The focus of the competency is on understanding basic ethical principles. The Law Society of Upper Canada, like all law societies, agrees that law school is an appropriate stage at which to begin the process of identifying and applying ethical principles.

The Law Society of Upper Canada's submission raises the concern that there is no justification for deviating in the case of ethics and professionalism from the Task Force's general recommendations in favour of competencies, not courses. It also suggests that requiring a course could have the effect of segregating the topic, rendering it less likely that the topic will be addressed across the curriculum.

As suggested in Dean Cotter's article, which uses data from a law school survey, it would appear that increasingly more law schools are moving toward some form of stand-alone course in this area. The Task Force is encouraged by this development and believes that it highlights to law students the significance of the topic. This increasing focus may in fact engender more exposure throughout the curriculum as students gain greater insight into ethical principles.

Nothing in the Task Force's recommendation limits law schools from continuing pervasive approaches in addition to the stand-alone approach. A number of the schools currently follow both approaches.

Finally, in recognition of the unique nature of its recommendation in this area, the Task Force has specifically not recommended credit hours or teaching methodology, only that there be a course dedicated to the subjects of ethics and professionalism that addresses certain specified competencies. It believes that this strikes the appropriate balance.

The Task Force reiterates what it has said previously, that law societies must also take a greater role in inculcating in their members ethics and professionalism. Law school education can only address the issues in a preliminary way. The importance of lawyers being committed to ethics and professionalism throughout their careers makes it essential that law societies focus on this area in a variety of ways, including in bar

admission programs, continuing professional development programs and ongoing communications with the profession.

Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures. Increasing evidence of external scrutiny of the profession in this area and internal professional debates about ethical failures point to the need for each lawyer to understand and reflect on the issues. In the Task Force's view, the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better.

The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues. To ensure that law students receive this early, directed exposure the Task Force believes a stand-alone course is essential.

Substantive Legal Knowledge

The Task Force's recommendations on the appropriate areas of substantive knowledge that should be included in the entry requirements has engendered significant comment, particularly from members of law faculties. They have raised specific concern about (1) the basis for the substantive areas chosen; (2) the negative effect this "list" of mandatory requirements will have on innovation and flexibility in the law school curriculum; and (3) the danger of a one-size fits all approach.

Law school Deans and faculty understandably expressed concern that the profession may be seeking to dictate law school curriculum and by doing so may undermine the quality of law schools that have benefited from law societies' traditionally minimalist approach to articulating academic requirements for entry to their bar admission programs.

The concept of regulators requiring some degree of substantive legal knowledge of applicants for admission to the profession is a widespread requirement in common law

jurisdictions comparable to Canada. Australia, New Zealand and England and Wales all have required course content designated by the regulatory bodies. The United States does not have such requirements, except for legal ethics, but as the recent study for the Australian Law Deans points out,

it may be that this is explicable given that the state bar examinations have considerable influence on the curricula of the law schools, as most students intend to undertake those examinations.²⁴

In determining what substantive legal knowledge to require the Task Force considered the continued relevance of the current first year curriculum of the 16 law schools, the importance of students having foundational knowledge in both public and private law, the competency framework research undertaken by various law societies in Canada, the regulatory approaches in other comparable common law jurisdictions and the importance of ensuring that the requirements do not interfere with the flexibility and innovation in current law school education.

The Task Force recommends a national requirement that represents a balance between competing perspectives and imperatives. It recognizes that the requirement may represent a snapshot at a point in time. It has considered law school curriculum while at the same time addressing the framework of legal knowledge that its inquiries and consultations have led it to believe are foundational.

A law school graduate with a general understanding of the core legal concepts applicable to the practice of law in Canada, as set out in the Task Force's recommendations, will have the building blocks necessary to go forward into the bar admissions program. The Task Force's recommendations reflects its view that every graduate of a Canadian law school or recipient of an NCA Certificate of Qualification should understand,

- (a) the foundations of law, including principles of common law and equity; the process of statutory construction and analysis; and the administration of the law in Canada;
- (b) the constitutional law of Canada that frames the legal system; and
- (c) the principles of criminal, contract, tort, property and Canadian administrative law and legal and fiduciary principles in commercial relationships;

²⁴ CALD Report, 2008. p.37.

as set out in the Task Force's recommendations.

The Task Force is equally satisfied that nothing in its competency requirements, including in the area of substantive law knowledge, will interfere with flexibility or innovation in the law school curriculum. This is particularly the case because the Task Force has not, with the exception of ethics and professionalism, recommended courses in each competency or dictated credit hours, teaching methodology, or assessment.

The Task Force has received the most comment on the inclusion of the competency now described as "legal and fiduciary principles in commercial relationships." The concern has been raised that unlike the other requirements that simply restate current components of the curricula or are more generic in their description, this competency appears to reflect a more specific content choice. The suggestion has been that this opens up a potentially endless debate on why other areas such as family law, estates, or labour law have not been included.

Just as an understanding of principles of constitutional law, administrative law, contract or property and Canadian administrative law principles are foundational so too is an understanding of the legal concepts in commercial relationships. The Task Force's recommendation is based upon the pervasive nature of commercial relationships to wide ranging areas in which lawyers' advice is sought.

The Task Force received comments on its recommended competencies from the majority of law societies. All agree with the commitment that regulatory standards should not interfere with law school innovation. Some suggest adding or removing one or more competencies, but in general agree that the proposed competencies are acceptable. They are of the view that implementing the competencies should not result in substantial change to law school curricula. They agree that generally it should be left to law schools to determine how students will satisfy the competencies. Law societies also agree with the importance of a national requirement that would be applicable to NCA applicants.

THE APPROVED LAW DEGREE – ACADEMIC PROGRAM AND LEARNING RESOURCES

Comprehensive Legal Education – Institutional Requirements

In the Task Force’s preliminary discussion paper of November 2007 it concentrated on the question of required competencies, but had not yet considered the setting within which students acquire those competencies.

One of the concerns expressed to the Task Force about the competencies approach was that a “list” cannot begin to capture the richness of a law school education - the community in which one begins to think like a lawyer and also to examine law critically and address deficiencies in legal systems and principles. The Council of Canadian Law Deans has emphasized to the Task Force that modern law schools provide a liberal legal education as well as a professional education. Law is an intellectual discipline and the practice of law requires rigorous academic training as well as the development of practice skills.²⁵

Law societies agree with this view of legal education. Accordingly, the Task Force has considered whether to articulate other institutional requirements that should form part of the requirements for entry to law society bar admission programs. In its consultation paper the Task Force sought comment in four areas, namely, law school admission requirements, length of the law school program, program delivery and joint degrees. The most significant comment the Task Force received on these issues was the June 29, 2009 letter from the Chair of the Council of Canadian Law Deans, referred to earlier in this report and set out at Appendix 6.

In that letter Dean Cotter states,

In general terms the CCLD is of the view that the current situation, where Canadian law schools enjoy a margin of manoeuvre to set those requirements, subject to general policies of their universities, produces satisfactory results. While the requirements imposed by each law school are broadly similar, we note that the liberty they currently enjoy is used to

²⁵ Council of Canadian Law Deans. An Overview of Canadian Common Law Legal Education (LL.B./J.D. Degrees) May 2008.

tailor their programs to specific situations or to implement initiatives that are designed to respond to the increasingly diverse needs of the legal profession. There is no evidence that this flexibility threatens the protection of the public in any way. Accordingly, we would urge the Task Force not to recommend the adoption of any stringent standards with respect to those issues.

The Task Force agrees that wherever possible the institutional requirements set out in the national requirement for entry to bar admission programs should reflect current practice in Canadian law schools. This balances the regulatory objectives with law schools' desire to maintain flexibility of approach. By stating current practices as much as possible the Task Force leaves open the door for law schools to advise the Federation if current practices are no longer appropriate. This is particularly true, for example, in the area of technology, as Dean Cotter has expressed in his letter.

Academic Program

Entry Requirements to Law Schools

Law school pre-admission requirements in Canada have historically represented a compromise between the American model, which treats law as a graduate degree and generally requires an undergraduate degree for admission, and the English model, which treats law as an undergraduate degree to which students may gain access from high school.

The Law Society of Upper Canada's 1957/69 requirements mandated a prerequisite of either two years of university education after "senior matriculation" (what was then grade 13 in Ontario) or three years of university education after "junior matriculation" (grade 12).²⁶

Law schools in Canada accept students with a wide range of post secondary education qualifications. A large number of law students hold undergraduate university degrees.

²⁶ It appears that the 2/3-year requirement in Ontario was a compromise between the universities' representatives who initially proposed an undergraduate degree as the prerequisite and the Law Society benchers, who felt that two years was sufficient. C. Ian Kyer and Jerome E. Bickenbach. *The Fiercest Debate*. Osgoode Society, 1987. pp. 250-261.

Some hold postgraduate degrees. At the same time universities accept students who have two years of an undergraduate university education. McGill University accepts approximately 15 to 20% of its first year students directly from CEGEP which is a two-year, postsecondary, pre-university program of study unique to Québec.

Most Canadian law schools make provision for mature students and Aboriginal students who do not have the minimum two years of post secondary education, but are admitted in a special category after individual consideration by admissions committees.

The Task Force sees no reason to interfere with that flexibility, which it considers part of the innovation in law schools that should be encouraged. At the same time, however, the Task Force is of the view that the national requirement should include some reference to admission requirements to law school so as to avoid the suggestion that direct admission out of high school is possible, something which is not currently the case at any of the Canadian law schools.

The Task Force recommends that subject to special circumstances, the prerequisite for entry to law schools will, at a minimum, include successful completion of two years of postsecondary instruction at a recognized university or CEGEP.

Duration of the Program and Joint Degrees

The general law school program encompasses three years of study. This is consistent with requirements throughout North America and in other jurisdictions. A three year program or its equivalent in course credits will allow students to study the core foundational subjects of law and also be exposed to areas of study, including multidisciplinary fields that will enhance their perspective on the role of law and lawyers in Canadian society. The Task Force recognizes that some law schools may prefer a course credit requirement that would enable the student to complete law studies in fewer than three years without reducing the content of the program. Typically the three-year law degree is 90 credits. Accordingly the Task Force recommends that the length of the course requirements be expressed as three years or the equivalent in course credits.

In recent decades many Canadian law schools have introduced joint degree programs with related, but separate disciplines. The Task Force recognizes that interdisciplinary education is a rich and valuable part of law school education. Nothing in its recommendations should be interpreted to interfere with the capacity of law schools to offer such degrees. So long as the student has been engaged in a study of law for three years or its equivalent in course credits, and has acquired the competency requirements in so doing, joint degree programs should satisfy the national requirement. Law schools introducing major changes in their academic program, such as the introduction of a joint degree, should be encouraged to discuss them with the Federation to ensure that their graduates will continue to meet the competency requirements.

Methods of Delivery

The Law Society of Upper Canada's 1957/69 requirements specified that the three-year law school program should consist of full time attendance at a law faculty. Forty years ago the only delivery method for education, short of correspondence courses, was in-person attendance. Today there are new learning and delivery methods. As Dean Cotter's June 29, 2009 letter sets out law schools currently employ a variety of learning methods, including "in class" lectures, seminars, independent research, exchange programs, internships, clinical education, video conferencing with other law schools and so on. Outside Canada there are law schools that offer the degree entirely by way of distance learning.

Technological advances for delivering information are moving rapidly. The Task Force does not wish to inhibit innovative delivery or experimentation in this area. At the same time, however, it is of the view that Canadian law school education should, as it does today, provide a *primarily* in-person educational experience and/or one in which there is direct interaction between instructor and students. The use of the term "primarily" in the Task Force's recommendation is intended to allow for innovation and experimentation.

Learning Resources

The Law Society of Upper Canada's 1957/69 requirements specified the form of an acceptable law school, including the number of faculty, the number of weeks of teaching in a term, the maximum number of hours faculty could teach and other "bricks and mortar" requirements. The ABA maintains detailed accreditation requirements, although this approach is being studied with a view to shifting emphasis to other more outcome based learning measurements.

The Task Force is reluctant to define in great detail the form law school must take, particularly given the role of provincial governments in approving degree granting institutions and the complex university-based decision making process that addresses many of the law schools' physical components. The Task Force does, however, recognize that there are certain necessities for an effective legal education whose graduates can serve the public. The assistance of the working group of the Council of Canadian Law Deans has been considerable in helping the Task Force to appreciate the current practices and their advantages for law student education.

In the Task Force's view the most important consideration is that the law school be adequately resourced to fulfill its educational mission. At a time when all public resources are subject to financial pressures, the Task Force is reluctant to be too prescriptive in its recommendations, but has concluded that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved. To that end it recommends that the law school must,

- be adequately resourced to enable it to meet its objectives;
- have appropriate numbers of properly qualified academic staff to meet the needs of the academic program;
- have adequate physical resources for both faculty and students to permit effective student learning;
- have adequate information and communication technology to support its academic program; and
- maintain a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

The Task Force recommends that the approved Canadian law degree requirements also be applied in considering new Canadian law school applications. The presence of adequate learning resources in new law schools is essential to ensure that the high quality of legal education in Canada is maintained. The provincial and territorial governments will also make decisions in this area. Any new Canadian law schools whose graduates are to be eligible to enter bar admission programs will be required to comply with all of the components of the approved Canadian law degree, set out in the Task Force's recommendations.

COMPLIANCE REQUIREMENTS

Law Schools

National requirements for the approved Canadian law degree will require a national compliance mechanism. This is the most efficient and appropriate way to ensure consistency across the country and transparent, fair and objective processes.

The requirement for a national compliance mechanism does not, however, necessitate an intrusive or onerous approach. Existing Canadian law schools offer a high standard of education and the Task Force is satisfied that compliance with the competency requirements will not pose difficulty for any of them. At the same time, however, the Task Force does recognize that the creation of requirements represents a change in current practices and any compliance mechanism, however modest, will require some adjustment. It also recognizes that the recommendation for a stand-alone course relating to ethics and professionalism and the requirements to address competencies may require adjustment by some law schools.

The Task Force recommends that the compliance mechanism for law schools should be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function. In the annual report the Dean would confirm that the law school has conformed to the academic program and

the learning resources requirements and would explain how the program of study ensures that each graduate of the law school has met the competency requirements.

NCA Applicants

The Task Force recommends that, applying the national requirement, the NCA continue to assess applicants educated outside Canada to determine whether they have achieved the requirements and if not what additional requirements they will have to meet to obtain their certificate of qualification. The national requirement described in this report should provide appropriate guidance and result in NCA applicants being assessed in a manner consistent with graduates from Canadian law schools and in a transparent, objective, impartial and fair manner.

New Canadian Law Schools

The Task Force recommends that the national requirement for the approved Canadian law degree be applied when considering proposals for new law schools. Proposals would be required to demonstrate how graduates of the new law school would meet the requirements for the approved Canadian law degree, including the competency requirements. The Task Force recommends that the Federation's accrediting body be entitled to approve the new law degree with such conditions as it thinks appropriate, relevant to the national requirement.

Effective Date

The Task Force recommends that the Federation forthwith *adopt* the national requirement set out in these recommendations. Adopting the national requirement will make clear to existing law schools, to those making proposals for new law schools and to the NCA administrators and applicants the basis upon which applicants will be entitled to enter bar admission courses on a going forward basis.

It is essential, however, to ensure that the *implementation* of the adopted national requirement is completed in a fair manner that allows sufficient time for all those

affected by it to make the necessary adjustments and changes to their procedures. The Task Force's recommendation for an effective date specifically takes into account that,

- law societies and the Federation will need time to consider and approve the report and recommendations;
- law schools will need time to make any necessary curriculum changes, including in some cases the development of an ethics and professionalism course; and
- the timing of implementation must not prejudice students/applicants already engaged in their law school education or NCA processes.

The Task Force recommends that by no later than 2015, and thereafter, each applicant seeking to enter a bar admission program be required to meet the national requirement. Typically, as relates to applicants coming from law schools in Canadian common law jurisdictions, the requirements will apply to the class entering law school in September 2012, two academic years from now.

The Task Force is of the view that current law schools and the NCA should be encouraged to implement the national requirement before 2015 if they are capable of doing so. Moreover, any new law school proposals put forward before the date should address the national requirement since their own programs would likely be starting very close to or after 2012.

Implementation Issues

In addition to the effective date for the national requirement to apply, there are a number of other implementation issues that must be addressed. These include, but are by no means limited to,

- the form and substance of the standardized annual law school report;
- a mechanism to address non-compliance;
- the Federation's determination of the body to address compliance issues; and
- funding issues.

An implementation committee should begin working immediately to ensure a smooth transition period and the development of a transparent and flexible process that will effectively implement the national requirement.

The Task Force recommends that the Federation establish a committee to implement the recommendations.

CONCLUSION

Law societies have already demonstrated the ability to work together, adjust their individual approaches to embrace a national goal and maintain the necessary ongoing mechanisms to ensure that collaborative approaches remain relevant and meaningful in furtherance of the original goal.²⁷

A national requirement for entry of law school graduates to bar admission programs represents a continuation among law societies of a trend to foster and develop common approaches to regulation in the interest of the Canadian public in general, not limited by province or territory.

A national requirement for entry to bar admission programs addresses the issues raised in this report respecting the protection of the public interest, transparent regulation, fair access to regulated professions, criteria to be applied for new law school applications, AIT and CCB considerations and government scrutiny of regulators.

The requirement does this while at the same time respecting the high quality of legal education that Canadian law schools provide and the flexibility law schools should have to determine the most effective way to meet the requirements.

²⁷ For example, the NMA now provides for territorial mobility through The Territorial Mobility Agreement and work is currently underway on an agreement for mobility with the members of the Barreau du Québec.

TASK FORCE MEMBERS AND PROCESS

The Task Force comprises eight benchers and three staff members from law societies across the country:

John J. L. Hunter, Q.C. (Chair) (British Columbia)
Susan Barber (Saskatchewan)
Babak Barin (Québec)
Vern Krishna, C.M., Q.C. FRSC (Ontario)
Brenda J. Lutz, Q.C. (New Brunswick)
Douglas A. McGillivray, Q.C. (Alberta)
Grant Mitchell, Q.C. (Manitoba)
Catherine S. Walker, Q.C. (Nova Scotia)
Sophia Sperdakos (Law Society of Upper Canada)
Donald F. Thompson, Q.C. (Law Society of Alberta)
Alan D. Treleaven (Law Society of British Columbia)

The Task Force has met 21 times and has issued three previous reports:

- Discussion Paper, November 2007
- Consultation Paper, September 2008
- Interim Report, March 2009

In 2007 the Task Force Chair met with the Council of Canadian Law Deans (“the Council”) and invited input from the Deans. The Task Force met twice with a working group that the Council established whose members were former Dean Patrick Monahan of Osgoode Hall Law School, former Dean Nicholas Kasirer of McGill University and Dean Brent Cotter of the University of Saskatchewan College of Law.

In March 2008 an ad hoc group of law faculty invited the Task Force to a question-and-answer session and provided the Task Force with a paper outlining its perspectives and suggestions outlined during the session.

In September 2008 the Federation authorized this Task Force to distribute its consultation paper to law societies, the legal academy, the profession and legal

organizations and to seek written submissions until December 15, 2008. The Federation distributed the paper to all law societies, the Canadian Association of Law Teachers, the Canadian Law and Society Association, the Canadian Bar Association, the Deputy Minister - Justice Canada, the Minister of Justice and Attorney General of Canada, the Ad Hoc Working Group of Law Faculty that had met with the Task Force at an earlier stage in its work, the Council of Canadian Law Deans, and the provincial Attorneys General. It invited law societies to consult with their own constituencies as they saw fit. A number of law societies issued invitations to their members and legal organizations to provide written submissions.

The Task Force received 37 responses from individuals, law societies, the legal academy, government, and organizations as follows:

Law Societies

Law Society of Alberta
Law Society of British Columbia
Law Society of Manitoba
Law Society of New Brunswick
Law Society of Saskatchewan
Law Society of Upper Canada
Law Society of Yukon

Canadian Law Faculties/Deans/Professors/Students

Professor H. W. Arthurs, Osgoode Hall Law School
Council of Canadian Law Deans
Queen's University Faculty of Law
Dean Mary Ann Bobinski, Dean University of British Columbia, Faculty of Law (Personal Capacity)
University of Calgary Faculty of Law
Bruce Feldthusen, Dean – University of Ottawa (Personal Capacity)
University of Saskatchewan, College of Law
Dean Brent Cotter, University of Saskatchewan, College of Law (Personal Capacity)
Dean Bruce P. Elman University of Windsor Faculty of Law (Personal Capacity)
Associate Professor Joanna Harrington –Faculty of Law, University of Alberta
Canadian Academic Law Library Directors Association (CALLDA)
Canadian Association of Law Teachers (CALT) and Canadian Law and Society Association (CLSA)

Other Law Schools

University of Huddersfield, West Yorkshire England
Lee Stuesser – Bond University

Universities

Wilfred Laurier University

Government

The Hon. Alison Redford, Minister of Justice, Alberta
The Hon. Jackson Lafferty, Minister of Justice, Northwest Territories
Department of Justice, John H. Sims
The Hon. Thomas J. Burke, Attorney General, New Brunswick

Organizations

Canadian Human Rights Commission
Canada Law from Abroad
Office of the Fairness Commissioner – Ontario

Individuals

George K. Bryce
Margaret N. Capes
D. Fox
Ersdale Knight
David Norman
Shaida Ratansi
Brittany Tofangsazan
John W. Whiteside (summary)¹

In June and July 2009 the Task Force received further helpful input from the Council on the issues raised in the Task Force's consultation paper, received a motion that Faculty Council of the University of Ottawa adopted in March 2009 and met with members of law faculties, including a meeting at the University of Toronto Faculty of Law and the Faculty of Law, University of Ottawa to further discuss the issues in the Task Force's consultation paper.

¹ All submissions are available on request.

THE LAW SOCIETY OF UPPER CANADA

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20th February 1984

David H. Jenkins, Esq.,
P.O. Box 2140,
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CHARLOTTETOWN, Prince Edward Island.
CIA 8B9

Dear David;

RE: APPROVED CANADIAN LL/B. DEGREES

Background

During the latter decades of the 19th century and the early decades of the present century a legal education in Ontario consisted of a mixture of service under articles in a law office and attendance at lectures in Osgoode Hall.

For the purpose of this letter it is unnecessary to go into detail, but it should be noted that the earliest records indicate a recognition that the substantive law could best be learned in a different way from the techniques involved in the practical application of it. In the period which included the First World War matriculant students were enrolled in Osgoode Hall Law School, entered into articles of clerkship and served in that capacity for five years during which time they also attended lectures at Osgoode Hall, normally, one lecture first thing in the morning and another late in the afternoon. This arrangement made it necessary for all articling to be done in Toronto. Students with a University degree could complete the course in three years.

In 1949 the curriculum changed. Students were required to have a first degree before entering Osgoode Hall Law School and then attended two years full time lectures in Osgoode Hall followed by a third year of full time articling. The fourth and final year harked back to the earlier system and involved half a day's lectures with the remainder of the day devoted to work under articles in the office.

A Time of Ferment

The arrangements just described continued into the second half of the century but were subjected to increasing criticism. Dr. Cecil Wright, a dean of Osgoode Hall Law School and later dean of the University of Toronto Faculty of Law, articulated the dissatisfaction which was growing within the profession with what was called a trade school approach to the teaching of law. It was no longer considered appropriate for law students simply to learn the law and the techniques of applying it. At the University of Toronto Law School they were led to approach existing law critically, to regard the law as a developing organism which should be subjected to critical analysis and which would benefit from imaginative reform. The so-called case method which had developed in the United States became the foundation of an innovative approach to the teaching of law particularly at the University of Toronto Law School. The differences between that school and Osgoode Hall Law School became focused on the requirement that university law school graduates must complete the fourth year of the Osgoode curriculum before being called to the Bar. There was no dispute that the university graduates needed to serve the third year under articles but they resented being required to attend lectures during the fourth year which largely duplicated coverage of subjects they had already studied during their university law course.

During the late 1950's and early 1960's the pendulum attained its furthest swing toward an academic as distinct from a practical approach to the teaching of law.

The Problem of Increasing Enrolment

The average number of students attending Osgoode Hall Law School in the years 1937 to 1940 was about 325. Enrolment fell during the war years to a low of 109 in 1944 but with the end of the war it began to rise. In the Fall of 1945 it had climbed to 445, in 1946 to 700, and in 1947 it reached 801. Between 1948 and 1952 there was a drop to 624 but the following year showed a return to increasing enrolments which were not expected to decline again.

It was clear that the physical facilities at Osgoode Hall had become inadequate to cope with an enrolment of double the number of students it had been designed to accommodate in the pre war years. A special committee of Benchers under the chairmanship of the then Treasurer,

Cyril Carson, Q.C., was formed to address the problem and quickly concluded that two new lecture halls were needed together with accessory rooms for study and instruction as well as increased library facilities.

The committee recognized that the extent of the new accommodation that would be needed was linked to the question of the role that Osgoode Hall would play in legal education in the future and whether or not the Society would continue to assume the increasingly costly bulk of responsibility for legal education. To explore this question the committee invited representatives of eight universities and colleges in Ontario to meet with them to discuss the future of legal education in Ontario. Meanwhile, the need for improved facilities at Osgoode Hall had become so acute that the committee recommended that the building project could no longer be delayed and in October 1955 Convocation approved an immediate start on the construction of an addition to the law school wing.

A New Approach to Legal Education

Approved LL.B. Degree — Bar Admission Course

During a lengthy series of meetings the general form of a new system of legal education began to emerge. The first outlines were sketched in a letter from Dr. W. A. Mackintosh, principal and Vice-Chancellor of Queen's University, Kingston, to the Treasurer, Cyril Carson, Q.C. Later the committee agreed to place the development of the plan in the hands of a small group consisting of D. Park Jamieson, Q.C., John D. Arnup, Q.C. and Professor Corry of Queen's University.

From their meetings emerged a memorandum proposing that for anyone desiring to practise law in Ontario legal education would be divided into three stages: pre law study, law school course and Bar Admission Course. For those wishing to take legal training as preliminary to a business, governmental or a similar career only the first two stages would apply. The memorandum described the three stages as follows:

"A. ADMISSION TO LAW SCHOOL COURSE

1. The minimum requirement for admission to a law school course should be
 - (a) Successful completion of two years in an approved course in an approved University after senior matriculation;
 - or
 - (b) Successful completion of three years in an approved course in an approved University after junior matriculation.

Note: No opinion was reached as to whether a minimum standing in any such course should be required.

2. Of course, a degree in an approved course in an approved University would satisfy the minimum requirement.

B. LAW SCHOOL COURSES

1. The Length of the law school course should be not less than three years.
Under the proposals being considered by the Special Committee of the Benchers, the present Osgoode Hall Law School course would be divided into a full-time academic course of three years and a Bar Admission Course in which the practical training would be given. Thus the two functions which the Law Society now performs as a teaching institution for Legal Education and as part of the accrediting mechanism of the Law Society would be separated.
2. A law school course should contain certain basic subjects which would be compulsory for all students in all schools.
3. Additional subjects to complete the regular course should be at the discretion of each law school.
4. It is also recognized that some law schools may desire to specialize in particular fields.
5. Successful completion of a law school course should entitle the student to a law degree.

C. A BAR ADMISSION COURSE

1. Graduates from the Osgoode Hall Law School academic course or from an approved law course in an approved University in Ontario would be eligible for admission to the Law Society and entrance to the Bar Admission Course at

Osgoode Hall provided they also satisfied the further requirements prescribed by the Benchers such as citizenship, good character and fitness, and payment of fees.

2. Under the proposals being considered by the Special Committee of the Benchers, the Bar Admission Course would consist of a period of service under articles of not more than 15 months (June 1st to August 31st of the succeeding year) and a further period of practical and clinical training at Osgoode Hall, supervised by members of the Law School Staff and practising members of the profession, of not more than 6 months (September 1st to February 28th).
3. Upon proof of the required service under articles and the passing of such oral and written examinations as may be prescribed, the staff of the Bar Admission Course would certify to the Benchers that the student in question had successfully completed such course.
4. Call to the Bar would then follow in the usual way, which under these proposals, would take place not later than March in each year."

Because of the importance of understanding the full scope of the discussions which took place at that time I have attached as an appendage to this letter excerpts from the Report of the Special Committee on Law School of the 14th of February, 1957 in which the three stages of legal education are particularly described; a copy of a letter written in 1957 by D. Park Jamieson, who was then chairman of the Legal Education Committee, to the principals or deans of law schools interested in establishing approved law courses; a summary of the 1957 Regulations of the Law Society respecting approved law courses which set out the courses each approved law school was required to offer.

The new shape of legal education received the support of practitioners and teachers throughout Ontario but also commended itself to the profession in other parts of Canada. It preserved and indeed emphasized the distinction between the substantive and the practical components of a legal training and vested full authority in the law schools to teach the prescribed academic courses without in any way limiting their freedom to teach other courses which might not have direct relevance to a training for the traditional practice of law.

It is clear from the reports of 1957 that the original intention was simply to reshape legal education for Ontario. It soon became obvious, however, that universities in other parts of Canada expected that some of their graduates would want to be able to qualify to practise in Ontario. Also they approved of the direction in which Ontario was moving and were ready to move in the same direction themselves. Accordingly, the Law Society of Upper Canada made it clear that any university law faculty in Canada that was prepared to follow the format which had been adopted in Ontario could be approved for the purpose of having its graduates enter the Bar Admission Course in Ontario. The following is a list of the approved law schools in the order in which they received approval:

Osgoode Hall Law School — 1957
University of Toronto — 1957
Queen's University — 1957
University of Ottawa — 1957
Dalhousie University — 1957
University of Western Ontario — 1958
University of New Brunswick — 1958
University of British Columbia — 1959
University of Saskatchewan — 1961
University of Alberta — 1964
University of Manitoba — 1965
McGill University — 1969
University of Windsor — 1968
University of Victoria — 1975
University of Calgary — 1979
University of Moncton — 1979

In each case the same routine was followed in granting approval: the university law faculty would enquire what standards were to be met, they would receive the information from the Law Society of Upper Canada and after a period of planning would submit a detailed plan to bring themselves within the requirements. Their submission would then be circulated to all

the then existing approved law faculties and any comments received would be sent back to the applicant faculty and if necessary adjustments would be made. Ultimately, with the approval of all the existing faculties, the legal education committee in Ontario recommended to Convocation that the application for approval of the new law faculty be approved. When this was communicated to the faculty concerned they would put the first year's operation into effect followed by the second and third years until full approved status had been reached with the graduation of their first graduates.

There are at present sixteen universities across Canada which confer the approved LL.B. degree. It should be noted that until 1957 Osgoode Hall did not grant an LL.B. degree but rather the degree of Barrister at Law which was done at the same time the candidate was called to the Bar of Ontario. By a change in statute in 1957 Osgoode Hall Law School became empowered to grant academic degrees in law.

The first Bar Admission Course in Ontario began in 1958 composed of about thirty students. As transitional arrangements worked themselves through, the numbers began rapidly to increase as the graduates of the expanding number of approved schools reached the Bar Admission Course stage of their education.

Evolution

Within a few years a number of pressures began to develop within Osgoode Hall which were to have far reaching effects on the new system of legal education.

The physical addition to Osgoode Hall of two large lecture rooms and a series of seminar rooms and additional library facilities were again becoming overcrowded. They had originally been planned to accommodate a larger law school. By the early 1960's they were trying to house both a law faculty and LL.B. program and the Bar Admission Course teaching term. It became obvious that there was not enough room and that the two organizations had quite different needs which could only with difficulty be accommodated in the same space.

A second change was growing in significance. Osgoode Hall Law School had altered its essential nature by relinquishing to the Bar Admission Course the practical component of the legal education spectrum. It began more and more to take on the characteristics of a university law faculty and to lose the characteristics that it had shown during the many years that it had been the only professional law school in Ontario governed directly by the Benchers.

A third pressure came from government. The Law Society received some financial assistance from the government to help defray the costs of running the Bar Admission Course and also to help meet the expense of the new LL.B. program at Osgoode Hall Law School. The government made it clear that they would prefer Osgoode Hall Law School to be affiliated with a university for the purpose of receiving government assistance.

Coincidentally with these developments a new university to be called York was taking shape on the outskirts of Toronto and wished to have a law faculty. It was judged that there was no need for an additional law faculty in Ontario and so the suggestion was made that Osgoode Hall Law School quit Osgoode Hall and move to York University to form the basis of its law faculty. This was done in 1968.

The real significance of the move was that the Benchers no longer were in direct control of an approved law school and the first hand detailed knowledge they had had of the LL.B. course began to slip away from them. They retained the power of approval of law courses for the purpose of having their graduates enter the Bar Admission Course but they lost the intimate connection with one such course which had formed the basis of their control of the development of the courses taught in the approved law schools.

Another important change came about in 1968. The law deans in Ontario felt that the prescribed core courses provided too little flexibility and that if the various approved faculties were to be able to evolve better teaching methods they needed more freedom to decide on the contents of their curricula. They negotiated with the Society with the result that the number of so-called core subjects was reduced from eleven to seven by the deletion of evidence, agency, company law, and wills and trusts from the list of required core subjects.

The Ontario deans made the point that the law itself was evolving quickly and that law school curricula needed to be able to evolve as well and that in addition new teaching methods and techniques made it imperative that the Society evidence their faith in the ability of the law faculties to teach appropriately and well by trusting them to give their students a good legal education.

Traditionally almost every student that embarked on a legal education intended to be called to the Bar and engage in some form of practice. During this period, however, a small but

slowly increasing number of students entered law school intending to use the training in fields outside the traditional practice of law. The situation in this regard had been quite different from the experience in the United States where almost half the students entered law school without intending to practise law. In responding to this development the law faculties particularly in Ontario wanted to broaden the scope of their courses by offering an increased number of elective subjects to accommodate those who intended to enter fields on the periphery of practice or unconnected with practice altogether.

The change from eleven core subjects to seven had been accepted in Ontario without reference to the approved law schools outside Ontario. A number of other provinces deeply resented this unilateral action and proposed that graduates from Ontario would no longer be eligible to enter their Bar Admission Courses. Through several meetings of the Federation of Law Societies the position of the provinces which had been most critical of the change softened first to propose accepting Ontario graduates who had in fact covered the eleven core subjects and finally to accept an Ontario LL.B. on the original basis of equality. It was at this time that the approved Canadian LL.B. began to be known as the "portable" degree.

Role of the Federation of Law Societies of Canada

In view of the history of the development of the portable LL.B. degree in Canada it is understandable how Ontario became the approving authority for the Canadian approved LL.B. degree. It is less clear that it should continue to discharge this responsibility.

At the Federation's meeting in Quebec City in 1983, Ontario suggested that the responsibility be assumed by the Federation.

The development of the approved LL.B. degree in Ontario in 1957 had the effect of introducing a degree of uniformity of approach and content in legal education across the whole of Canada. This in turn has ensured a high degree of mobility for graduates seeking to enter practice in the various provinces and as well has provided a common basis from which LL.B. courses across Canada have developed while maintaining a standard which has remained acceptable nation-wide.

Inevitably as personnel within the various university law faculties change and new Benchers assume responsibility within the various law societies, stresses develop within the framework of the portable LL.B. degree. Individual law faculties wish to introduce innovations to improve both the content of their courses and the teaching techniques being used and it is important that these evolutionary changes do not endanger the portability of the degree. To accomplish this it is suggested that the same degree of consultation among the various law schools as characterized the initial approval of their program should be maintained to evaluate changes a faculty may wish to make which might bear on the basis of its approval or be of interest and assistance to other approved faculties. At present there is no formal reference to the Law Society of Upper Canada by approved law schools when changes in their curriculum or teaching methods are made. It may be that no significant changes have taken place which bear upon the basis for the approval of the degree given by any particular law school but it is not known with certainty whether or not this is the case. This situation must be remedied or the cumulative differences among the various law schools will continue until the very basis of portability is threatened which, once destroyed, might prove extremely difficult or even impossible to re-establish.

There are some indications that some graduates of approved LL.B. courses are coming to the Bar Admission Course in Ontario without adequate grounding in some areas of substantive law. This is occurring notwithstanding that law school faculties have undertaken to counsel students with respect to the courses they should take if they intend to go on to the Bar Admission Course. The extent of the problem is not precisely known, but it has become necessary for the Society to consider means of remedying the defects at the Bar Admission Course stage.

The scheme of legal education which was put in place in 1957 has served well for over a quarter of a century. It is not surprising, however, that it should now be subject to fresh evaluation in the light of circumstances which have been changing rapidly during those years. This letter is not the place to attempt such an evaluation but one or two matters might be identified for the sake of illustration.

It was probably never true that a newly called lawyer was omni-competent and fully capable of practising in any field of law. It is certainly true that the tremendous expansion in the number and complexity of fields of law has rendered such omni-competence quite impossible. It has always been difficult for a practitioner accustomed to handling certain types of matters

to switch the nature of his practice to another field of law. Some assistance can be gained by Continuing Education programs but often such programs do not provide adequate basic grounding for a person attempting to become adept at a new field but rather have been aimed at maintaining and enhancing the competence of those who continue to practise in fields familiar to them.

There is at present considerable discussion of specialization within the practice of law and it is suggested that there should be discussion as well of the possibility of recognizing clusters of related subjects which have in common their relationship to a recognizable area of legal practice. Such discussions might lead to the development of an alternative to true specialization which would involve the co-operation of law schools, governing bodies, and voluntary associations such as the Canadian Bar Association all of which organizations are in varying degrees involved in the initial education and training of lawyers and their continuing education. There is a bedrock of basic law which every lawyer must know and at the other end of the scale there are recognizable areas or fields of legal practice which can clearly be distinguished from other fields of practice each of which fields involves detailed mastery of skills and knowledge peculiar to that field of law. These clusters of knowledge may overlap with the clusters appropriate to another field but the fields themselves are more or less distinct as for example a real estate practice as distinguished from the practice of a criminal advocate.

Many law students recognize at the outset that their talents lie within certain broad limits and at an earlier stage than is now the case. As the conditions of practice change due to economic and other circumstances lawyers who have engaged in practice for some years may wish to change to engage in practice in another field. It is at present difficult for them to obtain the appropriate continuing legal education to enable them to do so.

The rapid expansion in the numbers serving in the legal profession has resulted in a dilution of the experience of the profession as a whole and this has made it more difficult for newly called lawyers to obtain the informal but invaluable counsel and advice of senior practitioners. Terms of articling are often served with quite junior members of the Bar and newly graduated practitioners form firms in which no senior experienced practitioners are included. It may be that some form of conditional licencing is indicated which would require junior lawyers to spend some minimum period of their early practice in association with members experienced in their chosen field of law before being permitted to practise alone or with others as junior as themselves.

These possibilities have been mentioned here to illustrate that after 25 years the present scheme can be expected to undergo re-examination and change. It is important, therefore, that appropriate steps be taken to ensure that these developments proceed if possible without the loss of the portability of the basic legal education.

The anomaly of one province discharging the necessary responsibility of co-ordination and control should be ended. The time appears to be ripe for the Federation of Law Societies to accept that responsibility and to play a central role in the orderly evolution of legal education in Canada. I should like to add a further thought respecting the role of the Federation in the future.

The development of a Federal Court System resembling the organization of a Provincial Court System and the rapid development of matters of national significance such as decisions on the Charter of Rights and Freedoms and the growth of inter-provincial or national commerce and industry which favours professional mobility all point to the desirability of the strengthening of the role of the Federation of Law Societies. In recent years through the auspices of the Federation the cohesion of the law societies across Canada has been greatly enhanced and questions of importance to all provincial governing bodies have been resolved through discussion and co-operation in a way which has bound them more closely together without in any way threatening the autonomy of the individual societies in their respective provinces.

I suggest that the governing bodies across Canada through the Federation of Law Societies not only keep pace with these developments but provide leadership in the consideration of the question of the formation of a Law Society of Canada which would accept responsibility for governing the national aspects of practice without impairing the status or the traditional roles of the individual provincial licencing bodies.

Yours very truly,
Kenneth Jarvis,
Secretary.

Office of the Secretary



OSGOODE HALL
TORONTO 1

15th April, 1969.

Professor Thomas G. Feeney,
Dean,
Faculty of Law,
University of Ottawa,
Ottawa 2, Ontario.

Dear Dean Feeney:

As you know, the Society's requirements for approval of law courses for the purpose of having their graduates enter the Bar Admission Course in Ontario have been in existence unchanged since 1957. The Legal Education Committee and Convocation have given careful consideration to these Regulations, particularly in the light of the changing conditions of legal education generally. They consider it desirable to introduce a greater measure of flexibility into the stipulated requirements. This will facilitate a greater diversity of emphasis among the approved courses and allow the individual schools to develop along the lines of their special interests.

I am pleased to enclose a copy of the requirements embodying amendments which have the support of the Legal Education Committee and the approval of Convocation.

Yours very truly,

Kenneth Jarvis,
Secretary

J:R

Encl.

Copy for all returning members of the Section marked for your information and attention of the Curriculum Committee
16/4/69 T.G.F.

LAW SOCIETY OF UPPER CANADA

The requirements of the Law Society of Upper Canada pertaining to the approval of Law Faculties for the purpose of the admission of their graduates to the Bar Admission Course as amended on March 21, 1969 are as follows:

1. Admission Requirements

The admission regulations for an approved law school are as follows:

- (a) Successful completion of two years in full-time attendance in an approved course in an approved Canadian university after senior matriculation; or
- (b) Successful completion of three years in full-time attendance in an approved course in an approved Canadian university after junior matriculation; or
- (c) A degree in an approved course in an approved university.

2. Academic Programme

The course for an approved law school is three years in full-time attendance leading to the degree of Bachelor of Laws (LL.B.) or its equivalent.

3. Curriculum

- (a) An approved law school shall offer instruction regularly in the following subject areas:

Agency
Banking and Bills of Exchange
Civil Procedure

Company Law
Conflict of Laws
Constitutional Law
Contracts
Criminal Law and Procedure
Equity
Evidence
Family Law
Jurisprudence or one subject of a
 jurisprudential nature
Labour Law
Legal History
Legislation and Administrative Law
Municipal Law
Partnership
Personal Property
Real Estate Transactions
Real Property
Sale of Goods
Taxation
Torts
Trusts
Wills and Administration of Estates

(b) It is understood that the different subject areas may be variously combined or subdivided at the different law schools, hence the above list should be regarded as indicating areas of the law in which instruction will be regularly offered. The list should not be regarded as necessarily establishing courses that must be taught separately or in combination under these specific labels. For example, 'Legislation' and 'Administrative Law' might be two separate courses under those names, whereas 'Personal Property' and 'Real Property' might be combined into a single course entitled 'Property'. Or, under a heading like 'Remedies', substantial parts of 'Civil Procedure', 'Contracts' and 'Property' might be combined.

The same sort of thing could be done under the heading 'Commercial Law'.

(c) Every student shall be required to take the major basic course offered in each of the following subject areas:

Civil Procedure
Constitutional Law of Canada
Contracts
Criminal Law and Procedure
Personal Property
Real Property
Torts.

(d) It is understood that subject to subparagraph 3 (c), the academic planning authority of each approved Law School may provide any or all courses to its students on a required or an optional basis; may require students to elect between alternative courses or groups of courses to attain either diversification or specialization to an extent deemed desirable and may add courses to its curriculum on a required or an optional basis in subject areas other than those listed in subsection 3 (a).

4. Sequence of Courses

The academic planning authority of each approved law school may determine the sequence in which courses are taught.

5. Annual Session and Hours of Lectures

(a) The academic year shall extend for approximately thirty effective teaching weeks exclusive of examination periods.

Each student shall be under instruction or supervision by the teaching staff for approximately fifteen hours per week in class sessions, seminars, tutorials and legal writing or research projects.

(b) The academic planning authority of each approved law school may determine the hours allotted to the various courses offered.

6. Teaching Staff

Chiefly for the benefit of universities considering setting up new law faculties, the Law Society has prescribed certain basic requirements with regard to full-time teaching staff. Thus, the minimum number for the instruction of the first year is three, including the Dean. One additional full-time member must be appointed to the staff for each additional year so that in the result the basic full-time staff will be five when all three years are being taught.

7. Teaching Hours

The maximum teaching load recommended by the Law Society for each member of the full-time staff is six lecture hours per week.

8. Library

The Law Society requires to be assured that adequate

facilities, including library books and reading space, are available to the students and the faculty.

April 1st, 1969.

ENTRY TO THE LEGAL PROFESSION – A COMPARATIVE SNAPSHOT

APPROACHES TO REGULATORY/ACCREDITATION STANDARDS IN OTHER JURISDICTIONS

UNITED STATES

There are hundreds of law schools in the United States and a wide range of quality from superlative to those that operate entirely on-line and are not associated with any university. To address this wide range of quality the American Bar Association (“ABA”) has developed and administers a rigorous law school accreditation process, including a period under provisional accreditation.² As of June 2008 there were 200 ABA accredited law schools in the United States. This is in contrast to Canada’s 16 law faculties that offer a common law degree and six that offer a civil law degree.

There are U.S. law schools that do not have ABA accreditation. In most jurisdictions graduates may only write the state bar examination if they have graduated from an ABA accredited school. A few jurisdictions, such as California, have a separate accreditation system for non-ABA school graduates who may be entitled to write the bar examination. Thus, generally speaking the ABA requirements dictate minimum standards to which the “approved” American law school must conform.

The preamble to the ABA Standards for Approval of Law Schools states that they are founded primarily on the fact that law schools are the gateway to the legal profession. They are minimum standards, designed, developed and implemented for the purpose of advancing the basic goal of providing a sound program of legal education. The preamble goes on to state that an approved law school must provide an opportunity for its students to study in a diverse educational environment, and in order to protect the interests of the public, law students and the profession, it must provide an education program that ensures that its graduates:

- (1) understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
- (2) receive basic education through a curriculum that develops:
 - (i) understanding of the theory, philosophy, role and ramifications of the law and its institutions;

² The American Association of Law Schools also maintains an accreditation system, which operates with a slightly different perspective from the ABA. Member schools must meet its accreditation requirements for membership, but it is not recognized by the Department of Education as an accrediting agency and no jurisdiction requires that a student have graduated from an AALS school in order to gain admission to the bar.

(ii) skills of legal analysis, reasoning and problem solving; oral and written communications; legal research; and other fundamental skills necessary to participate effectively in the legal profession;

(iii) understanding of the basic principles of public and private law; and

(3) understand the law as a public profession calling for performance of pro bono legal services.

The ABA standards then go on for eight chapters setting out the minimum requirements for the organization and administration of a school, the program of legal education, the qualifications, size, instructional role, responsibilities of and professional environment for its faculty, admissions and student services, its library and information resources including personnel and the collection, and its minimum physical facilities.

In addressing the program of legal education the ABA standards state:

Standard 301. *OBJECTIVES*

(a) A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.

(b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.

Standard 302. *CURRICULUM*

(a) A law school shall require that each student receive substantial instruction in:

(1) The substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) Legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) Writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after first year;

(4) Other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

- (5) The history, goals, structure, values, rules and responsibilities of the legal profession and its members.
- (b) A law school shall offer substantial opportunities for:
- (1) Live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;
 - (2) Student participation in pro bono activities; and
 - (3) Small group work through seminars, directed research, small classes, or collaborative work.

In the American context, this approach provides a consistent template against which to measure schools. In an environment of hundreds of schools it provides a highly structured measurement tool to ensure minimum quality. It provides law schools with arguments for funding within their university environments to meet the standards. It recognizes that quality education is about both program content and learning environment.

In September 2008 the Council of the ABA Section of Legal Education and Admissions to the bar began a comprehensive review of the ABA Standards for the Approval of Law Schools. It is expected to take two years. Among the issues under discussion is the proposal to shift the focus of the Standards from input measurement to outcome measurement. The interim report of the ABA's Outcome Measures Committee notes that the proposal flows from a shift in thinking among legal educators in the United States and elsewhere, with particular emphasis on two reports published in the U.S.: WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007); and ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007). The Outcome Measures Report places a great deal of importance on the Carnegie study's analysis of how schools should prepare students to become competent professionals. The Report notes that the Carnegie study,

...ascribes three apprenticeships that should make up their education. The first apprenticeship is the cognitive or intellectual, which provides students with the academic knowledge base. The second apprenticeship is the forms of expert practice shared by practitioners. The third is the apprenticeship of identity and purposes, which introduces the student to the values required of the professional community. ... In shorthand, CF describes these three apprenticeships as "knowledge, skills, and attitude."(p.7)

The ABA has also recently announced the establishment of a “Special Committee on the Professional Education Continuum” to consider the implications of a number of studies and changing theories of pedagogy on the legal education continuum. The goal and approach of the Committee has been described in a memorandum from Randy Hertz, Chair, Section of Legal Education and Admissions to the Bar, as follows:

Using the MacCrate Task Force's conception of legal education and preparation for practice as a continuum that begins prior to law school and continues after law school, the Special Committee will consider the pedagogical innovations stimulated by the Carnegie Foundation's report on legal education, the follow-up work by the Legal Education Analysis and Reform Network (LEARN), and the CLEA "Best Practices" report, and will examine the implications of these developments for all stages of the professional education continuum.

The committee's central purposes will be to (1) contribute to the ongoing national discussion of legal education, bringing to bear the Section's unique perspective as an organization composed of academics, practitioners, judges, and bar examiners; and (2) serve as a resource for and consultant to Section committees that are concerned with one or more of the segments of the professional education continuum. The committee will gather information, write reports or papers as appropriate, and propose conferences and/or workshops as appropriate.

It will be some time before either of these reviews results in any changes to standards or accreditation, but it is clear that there is momentum gaining in the United States for a shift in the approach to both legal education and law school accreditation.

COMMONWEALTH JURISDICTIONS

Australia, England and Wales, and New Zealand focus their attention on curriculum-based requirements.

In both Australia and England and Wales the law degree can be a true undergraduate degree, namely that students may enter it right out of high school. Often the law degree is taken at the same time as another liberal arts or science degree. In some schools it may also be taken following completion of an undergraduate degree.

Australia

Typically the Australian jurisdictions provide that a degree will be accredited if it requires completion of the equivalent of at least three years full-time study of law and a satisfactory level of understanding and competence in the following areas of knowledge:

Criminal Law & Procedure
Torts

Contracts
Property
Equity
Company Law
Administrative Law
Federal & State Constitutional Law
Civil Procedure
Evidence
Professional Conduct.³

In respect of each of these areas of knowledge, the rules in each jurisdiction include a synopsis of the subject area in a schedule, which specifies a range of topics for each area or, as an alternative, requires that topics, of such breadth to satisfy a more general guideline, are taught. So, for example, under criminal law and procedure the academic requirements might be stated as follows:

Criminal Law and Procedure

1. The definition of crime
2. Elements of crime
3. Aims of the criminal law
4. Homicide and defences
5. Non-fatal offences against the person and defences
6. Offences against property
7. General doctrines
8. Selected topics chosen from:
 - attempts
 - participation in crime
 - drunkenness
 - mistake
 - strict responsibility.
9. Elements of criminal procedure. Selected topics chosen from:
 - classification of offences
 - process to compel appearance
 - bail
 - preliminary examination
 - trial of indictable offences.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the general doctrines of the criminal law and in particular examination of both offences against the person and against property. Selective

³ These are commonly known as the Priestley 11, named for the Chairman of the Committee that drafted them.

treatment should also be given to various defences and to elements of criminal procedure.⁴

Although there is currently no formal national accreditation system the uniform adoption of the Priestley 11 in every law school in Australia has meant that there is a strong degree of uniformity to the accreditation process that happens at the State level.

In 2008 the Australian Council of Law Deans (CALD) unanimously approved in principle a national standards model for application to law schools. The issue of a national accreditation system based on the standards is also under discussion. In considering the standards for the law course some outcome measurement language is used as follows:

2.1 Educational Outcome

2.11 The law school has identified, defined and disseminated the attributes that law students should exhibit on graduation.

At the same time, however, the standards speak to “curriculum content.” The standards also address “bricks and mortar” requirements somewhat along the lines of the ABA Standards.

England and Wales

The Law Society of England and Wales and the General Council of the Bar are authorised to prescribe qualification regulations for those seeking to qualify as solicitors or barristers. They have indicated that they will “recognise a course of study leading to the award of an undergraduate degree” if it satisfies the requirements as set out in their *2002 Joint Statement issued by the Law Society and the General Council of the Bar on the Completion of the Initial or Academic Stage of Training by Obtaining of an Undergraduate Degree* (Joint Statement).

The statement includes both resource and program of instruction components, addressing learning resources (includes human resources, physical resources, and student supports), the requirement that the institution granting the degree has such authority granted by the Privy Council, the length and structure of the course of study, standards of achievement expected of students (knowledge and skills), the knowledge and general transferable skills (there is significant overlap between the standards and the knowledge and transferable skills) and the content or coverage of the course of study.

The content or coverage, referred to as the Foundations of Legal Knowledge, is

- a. Public law, including Constitutional Law, Administrative Law and Human Rights
- b. Law of the European Union

⁴ CALD Report 2008. p.78.

- c. Criminal Law
- d. Obligations, including Contracts, Restitution and Tort
- e. Property Law
- f. Equity and the Law of Trusts
- g. In addition, training in legal research.
- h. The remaining half-year in law must be achieved by the study of legal subjects. A legal subject means the study of law broadly interpreted.

The required knowledge and general transferable skills are articulated as

Knowledge

Students should have acquired –

- 1 Knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge.
- 2 A basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practise law.
- 3 The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas.
- 4 The intellectual and practical skills needed to research and analyse the law from primary resources on specific matters; and to apply the findings of such work to the solution of legal problems.
- 5 The ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences.

General Transferable Skills

Students should be able –

- 1 To apply knowledge to complex situations.
- 2 To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them.
- 3 To select key relevant issues for research and to formulate them with clarity.
- 4 To use standard paper and electronic resources to produce up-to-date information.
- 5 To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question.
- 6 To use the English language and legal terminology with care and accuracy.
- 7 To conduct efficient searches of websites to local relevant information; to exchange documents by email and manage information exchanges by email.
- 8 To produce word-processed text and to present it in an appropriate form.

The Solicitors Regulation Authority has recently revised the rules and approaches for the Legal Practice Course (LPC), which is a required step in the process of becoming a solicitor. It follows and builds upon the academic training. The new LPC focuses on outcomes that the successful students should be capable of doing at the end of the

course. They are described as the “irreducible minimums” that all students need to demonstrate to pass.

New Zealand

Legal education regulation in New Zealand is governed by the New Zealand Council of Legal Education. It is an independent statutory body that defines and prescribes courses of study for those seeking admission as barristers and solicitors and for general legal education.

The Council's 2008 report sets out the role of the Council in setting standards:

The general activities of the Council are public interest, regulatory concerns and centre on the Council's responsibilities for the quality and provision of legal training prior to admission as barristers and solicitors.

These activities include -

- setting courses of study for the examination and practical legal training of persons wishing to be admitted as barristers and solicitors in New Zealand;
- providing, or arranging for the provision of those courses of study;
- arranging for the moderation and assessment of those courses of study;
- assessment of qualifications particularly those of overseas law graduates and legal practitioners wishing to practise in New Zealand;
- arranging for the provision of research as necessary, and tendering advice on legal education;
- administering and conducting certain examinations.

To carry out its tasks in discharge of its functions set out in Lawyers and Conveyancers Act 2006, the Council has maintained its general liaison with the Judiciary, the legal profession, the universities and law students, and has specifically undertaken the activities detailed below.

PROVISION OF COURSES

Compulsory Law Subjects

The Council prescribes the core curriculum for the bachelor of laws degree and monitors these subjects through a moderation system. The five compulsory subjects that are moderated are –

Law of Contracts

Law of Torts

Criminal Law

Public Law

Property Law (or Land Law and Equity and Succession where Property Law is not offered.)

In respect of the above subjects the examination papers are settled by a university teacher and a moderator appointed by the Council of Legal Education. Moderation is also required for Legal Ethics which is a compulsory course for admission to the profession. A sixth Council prescribed core degree subject (Legal System) is not moderated owing to the introductory nature of the course and variations between courses.

Subjects Compulsory for Admission

During 1997 the Council introduced a requirement for all law students who completed their bachelor of laws, or bachelor of laws with Honours degrees after July 31, 2000 to pass a university course in Legal Ethics as a further requirement for admission. On August 1, 2008 the requirement was extended to all applicants for admission regardless of the completion date of their degree.

The course which was prescribed and moderated by the Council, has as its broad principles -

- an introduction to ethical analysis including an examination of various theories of ethics
- the applicability of ethical analysis to legal practice
- the concept of a profession and the ethical professional duties of practitioners (which includes, among other topics, conflicts of interest, confidentiality, duties to the Court, duties of loyalty and fidelity)
- the wider responsibilities of lawyers in the community.

The course was introduced in response to a report which had recommended that courses in Legal Ethics be required at three levels of legal education: academic, vocational training and continuing education after admission to the Profession. In New Zealand this was implemented by the Council by the introduction of the undergraduate university course in Legal Ethics which, while not a compulsory degree subject, is required for those students wishing to be admitted to the profession. The requirement was further implemented by the introduction of Ethics and Professional Responsibility components into the Council's Professional Legal Studies Course.

The Council also has responsibility for accreditation of professional legal studies courses.

Scotland

At present, the Scottish legal education and training framework consists of three stages leading to qualification, followed by a Continuing Professional Development regime post-qualification.

Academic stage

The first stage in the route to qualification is the academic stage which, in Scotland, can be undertaken either by way of an Exempting Scottish LL.B. Degree accredited by the Law Society of Scotland, or by way of the Society's own Professional Exams.

Exempting Scottish LL.B. Degree

The Society prescribes the program content and structure for degree programs to be accredited as Exempting Scottish LL.B. Degrees, which, together with other training, will provide entry to the Scottish solicitors' profession. The content and structure is equivalent to the curriculum for the Society's Professional Exams ('the Examination Syllabus').

The Society's current "Accreditation Guidelines for Applicants" for the Exempting Scottish LL.B. Degree state:

The professional subjects taught within the wider context of the LL.B. allow students exiting from an LL.B. to have acquired the requisite knowledge, understanding and generic skills of those subjects that form the foundation of subsequent professional training.

Specifically, those requirements are for:

Subject-specific abilities of:

- knowledge
- legal and ethical values
- application and problem-solving
- sources and research

General Transferable Intellectual Skills of:

- analysis, synthesis, critical judgement and evaluation
- independence and ability to learn

Key Personal Skills of:

- communication and literacy
- personal management
- numeracy, information technology and teamwork

And the following Professional Subjects:

- public law and the legal system
- conveyancing
- Scots private law
- evidence
- Scots criminal law
- Taxation
- European Community law
- Scots commercial law

The Society does not specify the number of credits to be attached to particular courses or, indeed, the overall number of credits to be allocated to the core subjects. What the Society's LLB accreditation guidelines do specify is that the program of study for an accredited LLB must include the study of the Professional Subjects for the equivalent of not less than two years.

Professional Exams

Unlike the Exempting Scottish LL.B. Degree accredited by the Society, the Society's Professional Exams require the individual to be in a pre-Diploma training contract under the supervision of a practising solicitor. The Professional Exams may also be taken by an individual who has graduated or is eligible to graduate with an Exempting Scottish LL.B. Degree but who lacks passes in all of the Professional Subjects. Although there is no validation or authorisation by the Society of firms offering pre-Diploma 'traineeships', the Society requires the pre-Diploma 'traineeship' to cover experience in Conveyancing, Litigation and either Trusts and Executries, or where the training solicitor is not engaged in private practice, the legal work of the training solicitor.

In 2006 the Law Society of Scotland launched a significant project to review all components of legal education from pre-call to post-call requirements. A project plan was introduced at the Annual General meeting in 2009 and is progressing forward. Among other features the proposals focus on learning outcomes. The report on the project notes:

Changing trends in professional education: Increasingly, the trend in professional education has been to move away from prescription of 'process' (ie specifying the length of the course, the curriculum, class sizes, tutor ratios, library holdings, and the like), to description of outcomes which need to be demonstrated. These are often referred to as "competencies", and are, increasingly, being adopted by firms in their use of 'competence frameworks' in order to measure or assess staff performance in a more objective and meaningful way. Jurisdictions in Australia, and England and Wales, as well as other professions, have adopted an outcomes-based approach, an approach which is also supported and encouraged by the UK Quality Assurance Agency for higher education.



Council of Canadian Law Deans
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June 1, 2009

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Dear John:

**Re: Federation of Law Societies of Canada
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans (CCLD) to offer our perspective on the March 2009 Interim Report of the Task Force on the Canadian Common Law Degree. We note the Task Force's plans for continued engagement with the legal education community regarding its work, and we believe it helpful to share with you our most recent thinking regarding the Task Force's Interim Report.

As I am sure you appreciate, the CCLD has come to regard the Task Force's mandate and activities as one of the most significant developments in many years in relation to legal education in Canada. We have given the issues extensive consideration in our law schools and within our own Council, virtually from the time of our first meeting with you in November of 2007. We have also carefully considered the Reports from the Task Force and the views of others in their submissions to the Task Force. We have appreciated having had this material shared with us.

In this letter we wish to communicate two perspectives or positions related to the Task Force's work. One relates to "competencies". The other relates to "compliance". (We are also preparing a separate response on "Institutional Requirements", which I will send to you in the coming few weeks.). We think that the perspectives we share in this letter are important to the work of the Task Force, and also of long term importance to legal education in Canada, the legal profession and the public that lawyers serve.

We advance them in the context of what we understand to be two acknowledged realities of your work. The first reality is that the legal profession in Canada presently faces the challenge of i) ensuring that a system is in place to ensure that fair consideration is given to foreign-trained lawyers who seek to become qualified to practice law in Canada, and ii) ensuring that a sound process, with sound criteria, is in place to assess applications for

new law schools in Canada. The Canadian law deans see this reality as an acknowledgment that there is a growing need for opportunities to be made available so that more people may take up the study and practice of law in Canada. We fully support this objective.

The second reality is that it is critical that these objectives - captured in the Task Force's mandate - be achieved in ways that do not diminish the quality of legal education presently provided in Canada. Our understanding is that this reality is widely shared within the Canadian legal profession and within the Task Force itself. We note with appreciation the Task Force's recognition of this in the Introduction in your March 2009 Interim Report:

"In varying degrees the submissions raise, directly or indirectly, the question of whether the Task Force intends some fundamental change to Canadian law schools. That is neither our intention nor what we consider to be our mandate. The Task Force fully appreciates the richness of legal education offered in Canadian law schools and the importance to the law schools of preserving their ability to deliver a rich and diverse legal education to students. "

We agree with this observation. It is in this spirit that we express the following perspectives.

With respect to the Task Force's work on the delineation of "competencies", we welcome the acknowledgment that "competencies" does not mean "courses", and that it is within the purview and mandate of a law school to identify the most suitable ways to satisfy "competencies" requirements of its students. We have given careful consideration to the Task Force's perspective on "competencies", as well as the suggestions and proposals of other commentators on this question. It is our considered judgment that if the Task Force continues to contemplate a "competencies" approach, the recommendations of the Law Society of Upper Canada (see attached) in this regard should be adopted by the Task Force. We are of the opinion that they reflect a modernized, relevant and contextual approach to legal education in Canada and that they meet the legal profession's expectations and requirements. Given that the issues leading to the formation of the Task Force are liable to have the greatest influence in Ontario, we are of the view that the Law Society of Upper Canada's perspectives on this question should be given special consideration in your deliberations. It is a framework that the law deans, including the law deans from Ontario, could accept.

Our second perspective is associated with the Task Force's expressed confidence in the quality of legal education in Canada at the present time. It is our view that the Task Force should recommend only those requirements for law school compliance that are necessary for fulfillment of law societies' mandated public interest responsibilities. Indeed these articulated standards are not only met, but exceeded, by our law schools today. It would be unfortunate in the extreme and contrary to the best interests of legal education, the legal profession and the public interest if substantial resources were required to be dedicated to compliance in circumstances where less intrusive alternatives are available to confirm that a high quality of legal education continues to be delivered at our law schools.

As you may know, Deans Monahan and Kasirer are leaving their positions in the near future. The CCLD intends to continue the Working Group of Law Deans, as a liaison group to your Task Force, but with the addition of Dean William Flanagan of Queen's Law School and Interim Dean Daniel Jutras of McGill University, along with myself. We would be pleased to continue our engagement with the Task Force, either through the Working

Group or through the CCLD as a whole, to address any issues related to your work or related to our submissions to the Task Force. We would be available to meet at your convenience.

Sincerely,

W. Brent Cotter
President
Council of Canadian Law Deans

APPENDIX

LAW SOCIETY OF UPPER CANADA
SUBMISSION
TO
THE FEDERATION OF LAW SOCIETIES OF CANADA
TASK FORCE ON THE APPROVED COMMON LAW DEGREE
(NOVEMBER 2008)
EXCERPT (p.6-7)

The Law Society [of Upper Canada] suggest the following as the competences that should be required for entry to law society bar admission/licensing programs in common law jurisdictions in Canada:

- a. Foundations of Canadian common law, including,
 - the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada;
 - Contracts, torts and property law; and
 - Criminal Law
- b. The constitutional law of Canada, including principles of human rights and Charter values and Canadian law as it applies to Aboriginal peoples.
- c. Principles of statutory analysis.
- d. Principles of Canadian administrative law.
- e. Legal research skills.
- f. Oral and written communication skills specific to law.
- g. Professionalism and ethical principles.

In listing these competencies the Law Society,

- supports the Federation Task Force's views that these are *competencies*, not *courses*, and that law students should be able to satisfy them in a number of ways that may differ from competency to competency and law school to law school;
- has deleted civil procedure as a required competency. It is important for law students to understand the principles that govern the resolution of disputes in the Canadian common law system; it is not essential for them to learn specific practice rules in law school. Students should be exposed to the principles while learning the foundations of common law;
- has specified which competencies should be acquired in the Canadian legal context, rather than requiring this of every competency;
- has expanded the competency related to constitutional law principles to include specific mention of Canadian law as it is applied to Aboriginal peoples;

- emphasizes “principles” of administrative law to ensure that there is no confusion that a course is being required. It also suggests that the word “regulatory” is unnecessary;
- has substituted the term “professionalism and ethical principles” for the Federation Task Force’s “professional responsibility”.



Council of Canadian Law Deans
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June 29, 2009

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Dear John:

**Re: Federation of Law Societies of Canada
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans to follow up on my previous letter of June 3, 2009 in order to provide, as promised, the CCLD's perspective on the Approved Common Law Degree described as "Institutional Requirements" in the March 2009 Interim Report by the Task Force. We have tried to respond to the Task Force's "Institutional Requirements" questions as presented in the Interim Report, but have also added a few comments on some aspects of Canadian law schools' present commitment to our 'institutional infrastructure' that we urge the Task Force to incorporate into its final report.

In general terms, CCLD is of the view that the current situation, where Canadian law schools enjoy a margin of manoeuvre to set those requirements, subject to the general policies of their universities, produces satisfactory results. While the requirements imposed by each law school are broadly similar, we note that the liberty they currently enjoy is used to tailor their programs to specific situations or to implement initiatives that are designed to respond to the increasingly diverse needs of the legal profession. There is no evidence that this flexibility threatens the protection of the public in any way. Accordingly, we would urge the Task Force not to recommend the adoption of any stringent standards with respect to those issues.

1. Entry Requirements

The Task Force Interim Report asks whether the current entry requirement of two years of university education should be maintained or whether the "*de facto* requirement of an undergraduate university degree" should be adopted.

We think it is inaccurate to speak of a "*de facto* requirement" of a prior university degree. While it is true that a large number of law school entrants do hold such a degree, and

sometimes even a masters or a doctorate, some Canadian law schools have, in circumstances including but not limited to mature students and Aboriginal students, felt entitled to admit students with less than a university degree.

Moreover, it is well-known that at McGill University about 15%-20% of the first year students arrive directly from CEGEP (*i.e.*, a two-year, post-secondary, pre-university program of study). McGill has decided that the level of achievement of this small group of CEGEP candidates is so outstanding that these students deserve admission. As a matter of fact, this group regularly produces some of McGill's best students: gold medalists, Supreme Court clerks, Trudeau Foundation scholars. Many of them go on to careers of high achievement as lawyers in Canada or elsewhere around the world. There is every reason to believe that these students are no less equipped to practice law than others. Moreover, Québec universities, including McGill, cannot require more than a CEGEP degree for entry into any undergraduate degree, including law.

There are other programs for the joint study of the civil law and the common law, including the University of Ottawa's National Program and Programme de droit canadien, the exchange programs between Université de Montréal and Osgoode Hall Law School and between Université Laval and the University of Western Ontario, and the graduate common law programs at Université de Montréal and Université de Sherbrooke, and finally the Université de Sherbrooke and Queen's University program. A number of graduates from those programs entered law school directly from CEGEP. Again, there is no reason to believe that they are less equipped to practice law. To take the University of Ottawa's National Program as an example, evidence has shown that outstanding CEGEP students perform equally well in law school as students who hold a prior university degree, and graduates of the National Program have led successful careers throughout Canada.

We would also point out that Canadian law schools participate in a number of joint programs where law is studied concurrently with another discipline. In some circumstances, this may result in a student beginning to study law before completing the requirements of the other degree. Yet, those students are held to the same standards for their law courses and there is no evidence to suggest that they perform differently than students who completed their undergraduate degree before the commencement of their law degree.

Therefore, in the absence of cogent evidence that the current situation is problematic in terms of the protection of the public, we would recommend that the flexibility currently enjoyed by each law school with respect to entry requirements be maintained.

2. Duration of the Program

We believe that it is more appropriate, and more in line with university practice, to express the duration of university studies in terms of credits rather than years. Increasingly, universities are recognizing that teaching takes place during summers, on exchange with other universities, through internships, on a part-time basis and subject to other temporal modalities. These days, it is more reliable to speak about the academic program by reference to credit requirements.

In this regard, the usual duration of a common law degree is 90 credits. This amounts to three years of study, excluding summer terms. However, we would suggest that this need not be a strict requirement, in order to take into account situations including, but not limited to courses followed in other faculties, exchange programs abroad, joint common law and civil law degrees, a common law degree undertaken after a Canadian civil law degree and joint degrees involving law and another discipline.

3. Methods of Delivery

The Task Force asks whether “in-person” learning should be a requirement for all or part of the common law degree, or whether other delivery systems should be taken into account. We understand the expression “in person” to mean direct interaction with an instructor.

Canadian law schools employ a variety of learning methods, including “in-class” lectures, seminars, independent research, exchange programs, internships, clinical education, and so forth. Some of those methods may not constitute “in-person” learning strictly speaking. The benefits of employing a variety of learning methods within a curriculum are widely acknowledged. Law professors retain a substantial discretion over the choice of learning methods, and CCLD members recognize the value of academic freedom in this regard. On the whole, Canadian law schools have strived to provide their students with the best learning methods.

Canadian law schools have begun to explore the possibilities offered by technological advances to embrace new methods of learning that would enrich the students’ learning experience. We would point out that technology allows forms of direct interaction between student and instructor that may be as beneficial as classical “in-person” interaction. To some extent, technology may help to make legal education more accessible to persons with disabilities, or to persons living in remote areas.

CCLD is of the view that it is too early in the adaptation of law teaching to technology to set precise standards concerning learning methods. We are concerned that precise standards could stifle creativity and prevent law schools and law professors from embracing technological advances to improve their students’ learning experience. Nevertheless, we do believe in the value of currently employed learning methods that may loosely be described as “in-person” and we do not support their replacement with technology-based learning. We believe that substantial “in-person” learning, with the opportunities for significant formal and informal engagement between the students and the instructor, and among the students themselves, provides important learning opportunities that are not able to be achieved in other ways.

4. Joint Degrees

Joint degrees, involving the study of law and another discipline, are common among Canadian law schools and are increasingly popular. These programs are designed to train professionals who will be able to successfully integrate another discipline in their legal practice. Law schools have been uniformly vigilant about preserving the law-specific character of their degrees so that the interdisciplinary experience complements legal training rather than acts as a substitute for the law. There is no indication that graduates of these programs fail to meet the regulatory standard of protecting the public.

CCLD is of the view that joint programs do not require a monitoring procedure distinct from the one envisaged for the regular common law degree.

5. Research and Scholarship

The importance of research and scholarship was not raised in the most recent Interim Report of the Task Force. Nevertheless, it is one of the features of Canadian legal education that has introduced into Canadian law schools a degree of vibrancy and relevance unparalleled in prior generations. We are strongly of the view that a law school without a commitment to research and scholarship is doing a disservice to its students, to the law, to the legal profession and to society itself. While we appreciate that the legal profession is not directly mandated to promote legal research and scholarship, we think it would be a serious mistake to fail to appreciate the ways in which faculty members committed to the scholarly enterprise of legal education, enrich the learning experience for students and prepare them for professional careers. The work of law teachers who are also legal scholars gives students the tools to see the law in imaginative ways, to give them the confidence to search for new perspectives in law, to approach legal problems and issues in a new light and to search out innovative solutions for their clients. This contribution to legal education is one of the most dynamic features of Canadian law schools, and contributes to an enriching legal education for students. In our view a commitment to research and scholarship is a critical 'institutional feature' of a modern, high quality law school.

6. Institutional Infrastructure

Though the Task Force did not identify the following institutional requirements of a modern, high quality law school in Canada in its most recent Interim Report, we wish to emphasize that other features of Canadian law school infrastructure are critical to the maintenance of quality. We urge you to address in your final report the essential nature of a well equipped law library, of appropriate faculty-student ratios, of law school investments in financial aid for students to ensure access to legal education, and related features of a legal education that have helped to maintain and improve the quality of Canadian law schools to date. Absent a recognition of these requirements, the Task Force risks inviting a minimal framework for the establishment of law schools in Canada and invites a 'race to the bottom' regarding legal education in Canada. This is surely in direct opposition to the mandate of the Task Force, is a set of potential outcomes that the Task Force itself would oppose and, most importantly, is the opposite of what Canadians rightfully expect of a high quality of legal education intended to protect and advance the public interest.

We appreciate the opportunity to share these perspectives with you and your Task Force, and welcome the opportunity to continue the dialogue on legal education with you and your colleagues.

Sincerely,

A handwritten signature in black ink that reads "Brent Cotter". The signature is written in a cursive, slightly slanted style.

W. Brent Cotter, Q.C.

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The Law Society of
Upper Canada | Barreau
du Haut-Canada

LAW SOCIETY OF UPPER CANADA

SUBMISSION

TO

THE FEDERATION OF LAW SOCIETIES OF CANADA

**TASK FORCE ON THE APPROVED COMMON LAW
DEGREE**

November 2008

INTRODUCTION

The Law Society of Upper Canada thanks the Federation of Law Societies of Canada for inviting it to make submissions on the Task Force on the Approved Common Law Degree's ("the Federation Task Force") consultation paper.

One of the Law Society of Upper Canada's ("the Law Society") most important functions is to ensure the entry level competence of newly called lawyers. Since early 2007, through its own Task Force, the Law Society has considered licensing and accreditation issues, the relationship between law school and professional licensing regimes, the accreditation of internationally trained professionals and criteria for the establishment of new law schools.

The factors identified as influencing the decision to establish the Federation Task Force are all at play in Ontario, perhaps more so than at any other law society. Ontario has the largest bar in the country, an increasingly diverse legal profession and citizenry, growing numbers of international lawyers and Canadian students with law degrees from outside Canada seeking admission to the bar, and challenging market place factors. It has six law schools and the highest number of law students and articling students in the country. Recent proposals for new law schools have all been made in Ontario. The Law Society is subject to the *Fair Access to Regulated Professions Act* requirements for transparent, objective, impartial and fair licensing processes. Its firsthand experience with all these issues has illustrated that they are complex and interwoven, requiring careful analysis and sensitive treatment.

The Law Society's submission reflects its Task Force's work as well as its relationship with the profession and legal academy in Ontario. It also reflects the Law Society of Upper Canada's unique position as the only law society that already has a formal statement, dating back to 1957 and amended in 1969, (1957/1969 document) of "requirements pertaining to the approval of Law Faculties for the purpose of admission of their graduates to the bar admission course."

The Law Society sought the views of lawyers, legal organizations and law schools in Ontario. It received a number of comments, which it is providing to the Federation Task Force under separate cover with this submission.

The Federation Task Force's consultation period has been short. A number of the issues the consultation paper raises are touched upon only briefly. The Law Society believes it is necessary to hear the views of others before it can properly comment on some of these. Accordingly, the Law Society's submission provides its preliminary views on some issues and defers comment on others. It looks forward to further opportunities to discuss the issues once the Federation Task Force reports on the results of the consultation process. It reserves its final views on any Federation Task Force recommendations to a later date.

TASK FORCE QUESTIONS

- 1. Does the suggested list of foundational competencies encompass those that candidates for entry to bar admission programs should possess?**
- 2. Is it over or under-inclusive?**
- 3. Is a stand-alone course on professional responsibility an appropriate requirement for candidates seeking entry to bar admission programs?**

The Law Society's by-laws require a candidate seeking entry into the licensing process to have graduated from an accredited law school in Canada or obtained a certificate of accreditation from the National Committee on Accreditation.

The 1957/1969 document defined a number of components for the "approved law school." In 2006, having received an application from Lakehead University respecting a proposed new law school, the Law Society recognized the need to revisit the 1957/1969 document, particularly because of significant changes that have taken place in the legal profession and law schools since 1969.

The Law Society has the responsibility for admission of lawyers to the bar and it has authority to articulate required competencies for those seeking to be licensed. The 1957/1969 document is evidence of this authority. Although outdated, it has had an important influence on the general structure of Ontario, as well as other Canadian, common law schools respecting prerequisites for admission to law school, compulsory courses and the duration of the law school program. At the same time, because the Law Society only specified a limited number of required components, law schools were able to develop innovative and flexible programs. The 1957/1969 document reflects a balance between the regulator's and the academy's priorities.

The Federation Task Force has recommended, as one option, that this document be updated, with the Federation and individual law societies articulating "foundational competencies" that law graduates seeking admission to provincial bar admission/licensing programs must have acquired in law schools. The LSUC Task Force on Licensing and Accreditation devoted considerable

time to discussing the advantages and disadvantages of this approach. A majority of the LSUC Task Force decided to recommend this model.

There were alternate views expressed by a minority of the LSUC Task Force members. The basis for the minority view is explained in the “Response to the Consultation Paper of the Task Force on the Canadian Common Law Degree,” submitted by Professor Harry W. Arthurs, former Dean of Osgoode Hall Law School, former President of York University, a leading Canadian expert on legal education and the legal profession. His full paper can be found as an Appendix, along with the other submissions received during the consultation process. See “Minority View” on page 11.

The majority of the LSUC Task force decided that the “foundational competencies” approach was the preferable option of those offered by the Federation Task Force Report. The next question, which the Federation Task Force has recognized, is what should be included as a foundational competency? A connected question is at what point in the legal education continuum is a competency best acquired?

The comments the Law Society received illustrate the range of views on foundational competencies. While most individuals and legal organizations agreed with stating competencies they differed somewhat on what should be included. They suggested changes to the list and additions such as family law, operation of a law practice, trans-systemic legal competency, taxation, and labour. In contrast, those in legal education raised concerns that any attempt to list competencies, with no evidence justifying one over another, or even explaining why such a list is necessary in the Canadian law school context, would damage quality and innovation in law schools.

The majority of the LSUC Task force does not agree that a statement of competencies would undermine law school innovation or that such a statement would mark a significant shift in the relationship between law societies and law schools. The 1957/1969 document’s statement of required courses, although not officially adopted as a national statement, has resulted in

beneficial consistency across all common law schools; arguably one of the reasons law societies could so readily adopt national mobility for lawyers in 2002.

The LSUC Task Force has received submissions that suggest that the Federation Task Force's competencies list is both over and under-inclusive. It is over-inclusive because it goes beyond foundational competencies and it is under-inclusive because having done so it ignores other equally or more important competencies. Moreover, even if all the competencies are foundational, it may not be necessary for them to be acquired in law school. The key is that they be acquired before call to the bar.

The Law Society suggests the following as the competencies that should be required for entry to law society bar admission/licensing programs in common law jurisdictions in Canada:

- a. Foundations of Canadian common law, including,
 - the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada;
 - Contracts, torts and property law; and
 - Criminal law
- b. The constitutional law of Canada, including principles of human rights and Charter values and Canadian law as it applies to Aboriginal peoples.
- c. Principles of statutory analysis.
- d. Principles of Canadian administrative law.
- e. Legal research skills.
- f. Oral and written communication skills specific to law.
- g. Professionalism and ethical principles.

In listing these competencies the Law Society,

- supports the Federation Task Force's views that these are *competencies*, not *courses*, and that law students should be able to satisfy them in a number of ways that may differ from competency to competency and law school to law school;
- has deleted civil procedure as a required competency. It is important for law students to understand the principles that govern the resolution of disputes in the Canadian common law system; it is not essential for them to learn specific practice rules in law school. Students should be exposed to the principles while learning the foundations of common law;
- has specified which competencies should be acquired in the Canadian legal context, rather than requiring this of every competency;

- has expanded the competency related to constitutional law principles to include specific mention of Canadian law as it is applied to Aboriginal peoples;
- emphasizes “principles” of administrative law to ensure that there is no confusion that a course is being required. It also suggests that the word “regulatory” is unnecessary;
- has substituted the term “professionalism and ethical principles” for the Federation Task Force’s “professional responsibility” for reasons discussed below.

The Law Society disagrees that,

- a. equitable principles, including fiduciary obligations, trusts and equitable remedies;
- b. business organization concepts; and
- c. dispute resolution and advocacy skills and knowledge of their evidentiary underpinnings;

should form part of the competencies that *must* be acquired in law school.

These are all important competencies, but they open up a potentially endless debate of what else should be included, with proponents of different components each advocating strongly for their particular area of law. This could result in law school curricula being largely mandated, a development that is neither necessary nor in the interests of quality legal education.

Prior to revising its licensing examinations in 2006, the Law Society spent over 12 months in extensive consultation with practitioners determining, assessing and validating the competencies that barristers and solicitors require in the early years of practice. It spent a further 18 months developing the licensing examinations that test those competencies. Among many others, the examinable competencies include the three that the Law Society suggests be removed from the Federation’s list. These are examples of important competencies that should be acquired before call to the bar, but not necessarily in law school. Law societies should also ensure that they continue to be emphasized in post-call education and requirements.

The Law Society suggests that in narrowing the competencies list, the Federation would accomplish its goal of articulating the fundamentals that law societies should expect of students *entering* their licensing programs, while avoiding an admittedly controversial debate that arises

as soon as the additional competencies are suggested. Law societies can address any additional competencies they believe important in their bar admission/ licensing programs and examinations.

The Law Society notes as well, that this approach could enhance the process for accrediting internationally trained lawyers. The equivalency assessment could be more directly linked to the stated competencies, while law society examinations could address the remaining competencies required for call to the bar.

Professional Responsibility as a Required Competency or Stand-Alone Course

A key competency for all law students, articling students and lawyers is identifying and applying the ethical principles that underlie the legal profession. This includes understanding the legal profession's unique role in society and the individual lawyer's role and responsibilities as a member of that profession. In addition to the broad ethical principles, lawyers must learn and apply the specific provincial and territorial law society rules of professional conduct that govern them.

In recent years, as concerns about declining professionalism and civility have increased and rules of professional conduct have become more complex all law schools and law societies have placed more emphasis on this area.

In Ontario, there are significant collaborative initiatives among the bench, bar and the Law Society to enhance the teaching of professionalism at various levels, including law school. The Chief Justice of Ontario's Advisory Committee on Professionalism was established in September 2000 "to maintain and encourage those aspects of the practice of law that make it a learned and proud profession." Composed of representatives of the judiciary, the Law Society, the legal academy and various legal and county law organizations, it is a steering committee to generate ideas and to make recommendations to other organizations and individuals within the legal community about voluntary initiatives to enhance professionalism.

The Law Society believes that the Federation Task Force's use of "professional responsibility" as a suggested competency may be restrictively interpreted to refer specifically to the *Rules of*

Professional Conduct. Law school may not be the most effective stage of the legal education continuum to teach the professional responsibility issues that flow specifically from the rules of professional conduct. There is little context for this learning, leaving students likely uninterested or confused.

The Law Society recently revised its licensing process to better situate professional responsibility training where it could be most effective. It has integrated it into the articling program, so that students are better able to directly relate what they learn to the “real world” articling environment. In addition, newly called lawyers will be required to complete 24 hours of accredited professional development during the first 24 months of their entry into practice. The objective is to ensure that early in their careers candidates receive the practical training they need to serve their clients in accordance with the expectations of lawyers prescribed in the *Rules of Professional Conduct*.

The post-call instruction is designed to create a tighter nexus between learning and day-to-day practice requirements, permitting lawyers to relate their educational materials directly to the events and issues that confront them in their own law practice. Moving some of the key professional responsibility competencies to the post-call venue allows the intended recipients to obtain this essential education as lawyers, amongst other professional lawyers.

Law school is, however, an appropriate stage at which to begin the process of identifying and applying ethical principles. The Law Society is satisfied that in Ontario law students currently learn these principles in a variety of ways across the law school curriculum, as well as in optional stand-alone courses, and within some of the other competencies the Law Society has suggested should be required. It believes that to emphasize the importance of these ethical principles it is appropriate to list this as a foundational competency.

The Law Society suggests, however, that it is not necessary to mandate a stand-alone course in ethical principles or professional responsibility at law school. The Federation Task Force has made a point in specifying competencies, not courses in its list, except for professional responsibility. It states that “the need to ensure that students have a solid understanding” in this

area justifies the exception. However, this argument could be made of any of the competencies and there is little else in the Federation Task Force’s paper to bolster the argument in favour of the exception.

The Law Society also suggests that the danger of a stand-alone course in ethical principles or professional responsibility is that it segregates the topic and renders it less likely to be addressed across the curriculum and in context. Ontario’s experience with the Chief Justice of Ontario’s Advisory Committee on Professionalism is that the academy, bench and bar are working well together in enhancing the profession’s exposure to the ethical issues at all stages of the legal education continuum. Listing “ethical principles” as one of the required competencies complements such a collaborative approach.

Minority View

One LSUC Task Force member, Professor Constance Backhouse, had a dissenting opinion with respect to the Federation Task Force’s “foundational competencies” approach. This minority view can be summarized as follows:

- 1) This is a “static” approach that fails to recognize that the practice of law is multi-directional, fluid, and that the pace of change has never been so fast.
- 2) The Federation Task Force failed to conduct sufficient or detailed research into the current educational offerings of law school or to consult fully with experts in legal education prior to making its recommendations.
- 3) The proposed list of “foundational competencies” is not based upon historical or current evidence of what lawyers actually know or do, nor is the list defended by evidence-based speculation about what they will have to know or do in the future.
- 4) This approach fails to recognize the important distinctions between *pre-entry* foundations needed to register for a bar admission/licensing process, and foundations that will be acquired during the opportunities presented throughout the articling period, the bar

admission/licensing process, the professional licensing exams, and the life-long continuing legal education that we know is necessary in today's changing world.

- 5) The approach has the potential to stifle innovation, experimentation, and diversity amongst Canadian law schools.
- 6) The Federation Task Force failed to consider the resource implications of mandating new “foundational competencies.” It also failed to consider the diverse objectives of legal education, or to develop reliable measures to test the present or proposed education practices.

- 4. Should the existing prerequisite for entry into Canadian common law faculties of two years of post-secondary education in a university setting be maintained or should it be changed to reflect that the factor requirement of an undergraduate university degree?**
- 5. If so, should McGill's tradition of admitting students following completion of a two-year CEGEP program be accommodated as an exception to the general prerequisite?**
- 6. Are there other exceptions that should be recognized and accommodated?**

Like the Federation Task Force, the Law Society does not have information on whether all common law schools in Canada (with McGill having a unique admission requirement) accept applications from students with only two years of post-secondary education in a university. It understands that although law schools may permit this, in recent years, the competition for admission has been such that those without a university degree are at a disadvantage.

The Law Society has not heard any significant argument for formally changing the prerequisite, and would be interested in hearing other comments on this issue. Without some clear reason for doing so it suggests that the option to apply to law school after two years of post-secondary education in a university, be left open. It does not have enough information about McGill's CEGEP admissions to be able to comment.

The Law Society does note that in considering this issue the Federation Task Force should pay attention to fair access to regulated professions legislation in Ontario and Manitoba. However the prerequisite for the Canadian common law school is expressed, particularly if the prerequisite is increased, the reasons should be clear to all applicants, domestic and international.

Whatever the decision on the general prerequisite for admission to law school there should also continue to be special admission categories, such as Aboriginal or mature students, to meet unique needs.

- 7. Should the standard length of the common law degree be expressed in terms of credit hours rather than years of study?**
- 8. If so, is 90 credit hours the appropriate standard?**
- 9. Should in person learning be required for all or part of the law school program?**
- 10. Are there other delivery systems that should be taken into account?**
- 11. How should joint degree programs be treated for the recognition of the common law degree?**
- 12. Should a national body monitor joint degree programs?**

The Federation Task Force has asked for comment on a number of “institutional requirements,” pointing out that these issues require reflection because of the changes that have taken place in law school education over recent decades. In particular, the Federation Task Force’s consultation paper includes a report from the Canadian Council of Law Deans describing the educational experience in the modern law school. The Federation Task Force has emphasized “the need for structures that accommodate regulatory requirements, but are flexible and capable of innovation.”

The Law Society is very interested in the issues raised in Questions 7 – 12, but it does not feel it has sufficient information to provide input at this time. In particular, it would appreciate learning more from law schools about,

- in person versus distance learning;
- whether expressing the law degree in terms of credit hours permits more flexible delivery methods and approaches; and
- the importance of joint degrees in the modern law school and how they are developed.

13. Should a national body be established to develop the components for recognition of law degrees from new law school programs?

14. Are there alternatives to this approach?

The Federation Task Force has identified a very important issue with which the Law Society has had both historic and recent experience in the form of the 1957/1969 document and the recent applications in Ontario for new law schools. Although, as the Federation Task Force points out, the Ontario government has announced that it will not be funding new law schools at this time, there may well be applications in the future. Applicants will want to know what criteria they are expected to satisfy.

The Law Society believes it is important to discuss an approach to new law school applications, but it is premature to answer the question the Federation Task Force has asked without more information on the proposed structure and operation of such a body. There are many questions to be considered, including,

- How broad would the body's mandate be?
 - Would it address curriculum, infrastructure, admission standards or something more limited?
 - How would it interact with government?
 - What recourse would an unsuccessful applicant have for further consideration of its application?

- Who would be represented on the body?
 - law societies
 - law schools
 - judiciary
 - community groups
 - law students
 - government

- Would those represented on the body determine the standards?

- Who would fund the body?
 - If the funding were unequal would those with a greater financial stake have greater control?

- If the body were a Federation body would all law societies be represented on it?
 - If not, how would this accord with the Federation's requirements for unanimity in decision-making?
 - If not all law societies were represented, how would representation be determined? Given its experience on this issue, for example, the Law Society would have concerns about not being directly involved. Others might feel the same way.

15. The Task Force has identified three possible compliance models. Please provide comments on these models.

16. Are there other models that should be considered and if so, what are they?

Under Question 1 the Law Society suggested modified foundational competencies. It agrees that if there is an articulated competency standard it is appropriate to consider how regulators can best monitor compliance.

Any compliance model should be only as intrusive as is necessary to satisfy regulators that the standard is being met. It should be cost efficient and flexible enough to reflect evolving priorities. In the Canadian context it should recognize that the profession is regulated provincially and that the more complex the compliance model the more difficult it will be to obtain agreement or accomplish change.

One of the Task Force models is described as “the approved law degree.” In some ways, this model reflects the approach under Ontario’s 1957/1969 document, with the main difference being the proposal for a national monitoring body. Whereas the 1957/1969 document assumed compliance, the Federation Task Force suggests that it is time for something more formal to address ongoing issues and changes to the standard, and to ensure, perhaps every five years, that schools are complying. As described, it could also be the body to consider criteria for new law schools and new programs such as joint degrees.

The implication of this model is that regulators must have an objective way of assessing that those entering bar admission/licensing programs have met the standard. Rather than requiring graduates to prove this individually, which would result in uncertainty and a highly complex monitoring bureaucracy, the onus would be on law schools.

While this approach makes sense in the American context, the Law Society is less convinced that it is necessary in Canada. The United States has hundreds of law schools of vastly different quality. As mentioned above, in Canada the 16 Canadian common law schools provide high

quality education, which in 2002 enabled law societies to easily agree that lawyer mobility was in the public interest.

The creation of a national monitoring body would be expensive, time consuming, and controversial with no clear rationale for why this approach is actually necessary in Canada. Given that the Federation of Law Societies of Canada requires unanimity for approving national initiatives, this model would be difficult to implement. Since viable alternatives to this approach exist, the Law Society suggests that this model not be pursued. Moreover, if it is to be given further serious consideration it must first be fully described, including its composition, infrastructure and cost.

The examination option is another proposed model. This would test law school compliance by requiring graduates to write a national examination as a prerequisite to entering law society bar admission/licensing programs. It is not clear what would happen to a student who fails the examination or how, except indirectly, law schools would be held accountable. Given that there are any number of reasons why students fail examinations it is not clear that this approach would accomplish its intended goal.

The Law Society supports licensing examinations that test competencies, as its extensive work in this area demonstrates. It shares, however, the concerns the Federation Task Force expresses about an *entrance* examination that purports to monitor compliance with regulators' standards. In addition, this model would require establishing a national body to set the examinations and monitor that their content remains relevant. The Law Society is not satisfied that the expense of this approach is warranted. Moreover, an entrance examination runs the risk of becoming a wall between law schools and law societies that makes dialogue between them more difficult.

The Task Force's third model is described as "the status quo." By this the Federation Task Force would appear to mean that there is no articulated regulators' national standard of competencies. Instead, a number of non-regulatory influences, described in the consultation paper, create the framework for quality law schools.

The Law Society disagrees with the status quo option. Like the Federation Task Force it considers that however rigorous university internal evaluation structures are, they have different mandates from law societies and define their missions differently.

At the same time, however, there are components of the current approach to law schools with which the Law Society agrees, namely that costly, intrusive compliance regimes are unwarranted for the reasons described above.

The Law Society suggests a compliance model that combines aspects of the approved law degree and status quo models. As is suggested in the approved law degree model the Federation of Law Societies of Canada and individual law societies should articulate those foundational competencies that law graduates seeking to enter bar admission/licensing programs must have acquired in law school. This would make it clear that regulators expect law schools to ensure that their students are taught these competencies. Articulating a national standard would be an important step forward from the status quo.

The Law Society is satisfied that having articulated the competency standard it is unnecessary at this time to specify a monitoring regime. Nothing in law societies' relationships with the current 16 common law schools suggests that this is warranted. Further, without the input on all the questions the Federation Task Force has posed it is not clear what the monitoring regime would be intended to address or what its scope would be.

The Federation and individual law societies should ensure that the profession, judiciary and law students are aware of the foundational competencies, so that they can identify gaps in the curriculum and address them with law schools. The Law Society suggests that its experience with the seven required courses set out in the 1957/1969 document is that Ontario law schools have conformed to the requirement without monitoring. Indeed, even without a nationally articulated standard there has been a high degree of compliance across the country. Moreover, none of the competencies in the Law Society's suggested list are new to the curriculum or would necessitate a substantial restructuring of law schools programs.

L &A Task Force Report
Correspondence (Letters are ordered with their replies, where applicable)

A

October 27, 2009 Letter from Debra Parkes, President, Canadian Law and Society Association, to Derry Millar;
November 26, 2009 Letter from Derry Millar to Debra Parkes.

B

October 27, 2009 Letter from Professor Martha Jackman, Faculty of Law University of Ottawa, to Derry Millar;
December 2, 2009 Letter from Derry Millar to Martha Jackman.

C

November 20, 2009 Letter from W. Brent Cotter, President, Council of Canadian Law Deans, to Derry Millar;
November 24, 2009 Letter from John Campion, President, Federation of Law Societies of Canada, to John J.L. Hunter, Q.C. Chair, Federation Task Force on the Canadian Common Law Degree;
November 25, 2009 Letter from John J.L. Hunter to John Campion;
December 2, 2009 Letter from Derry Millar to W. Brent Cotter.

D

November 25, 2009 Letter from Dean Ian Holloway, Q.C. Western Faculty of Law, to Professor Vern Krishna, CM, Q.C.

E

December 3, 2009 Letter from Interim Dean Jinyan Li, Osgoode Hall Law School, to Sophia Sperdakos.

F

December 9, 2009 Letter from Donna Greschner, Dean of Law University of Victoria, to Richard Stewart, Q.C., Bencher, Law Society of British Columbia.

G

January 4, 2010

E-mail from Jonathan Herman, CEO, Federation of Law Societies of Canada, to Law Societies referencing November 27, 2009;

November 27, 2009

Memorandum from National Committee on Accreditation to the Federation Executive Committee.

H

January 18, 2010

Letter from Amit Chakma, President and Vice-Chancellor University of Western Ontario; Allan Rock, President and Vice-Chancellor, University of Ottawa; Mamdouh Shoukri, President and Vice-Chancellor, York University and Alan Wildeman, President and Vice-Chancellor, University of Windsor to Derry Millar;

January 20, 2010

Letter from Derry Millar to Presidents and Vice-Chancellors Chakma, Rock, Shoukri and Wildeman.

I

Undated

Motion – Faculty of Law University of British Columbia

J

Undated

Motion – Faculty of Law at Dalhousie (now Schulich School of law)

K

Articles and Essay

November 6, 2009

Lawyers Weekly “Task Force Calls for National Standards.”

November 6, 2009

Globe and Mail “When Pigs Fly”

February 2, 2010

The “Fiercest Debate” over the Regulation of Legal Education in Ontario, by Katherine Levitt, Directed Student Research Paper, University of Ottawa, Faculty of Law.



Canadian Association
Law and Society Canadienne
Association Droit et Société

October 27, 2009

Derry Millar
Treasurer
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

via e-mail to dmillar@weirfoulds.com

Dear Treasurer Millar:

Re: Final Report of the FLSC Task Force on the Canadian Common Law Degree

I write on behalf of the Canadian Law and Society Association ("CLSA") to express our concern about the proposals contained in the Federation of Law Societies' Task Force on the Canadian Common Law Degree ("Task Force Report") and to invite you to discuss the issues raised in the Task Force Report with us. We understand that provincial and territorial law societies are being asked to adopt and act on the recommendations contained in the Task Force Report, recommendations which we believe will have serious and negative consequences for the continuum of legal education in Canada and for university legal education in particular.

In 2008, the CLSA joined with the Canadian Association of Law Teachers ("CALT") in 2008 to strike an expert joint committee on legal education to prepare a response to the Task Force's Consultation Paper. A copy of the CALT-CLSA response accompanies this letter. We believe that the concerns outlined in that document are even more apt in relation to the final Task Force Report and its recommendations.

Our members are interested in working with law societies across Canada to address emerging issues that have an impact on legal education (including, for example, the influx of lawyers who have received their legal education outside of Canada) and, to that end, we have adopted a set of principles that we propose should guide any initiatives to institute an "approved common law degree." Those principles are attached as Appendix A. We have also reviewed the Law Society of Upper Canada's submissions to the Task Force and we are open to considering the advantages and disadvantages of those proposals as a possible alternative to the Task Force's recommendations. I would be pleased to speak with you and to connect you with other members of our association who have expertise in these issues. I can be reached at parkesd@ms.umanitoba.ca.

The CLSA is a national not-for-profit association of over 300 scholars who are interested in the place of law in social, political, economic and cultural life. A majority of CLSA members teach and research in law faculties; however, our membership includes substantial representation from diverse disciplines such as history, sociology, political science, criminology, psychology, anthropology, and economics. Among its activities, the CLSA publishes a peer-reviewed journal, sponsors an annual conference and graduate student workshop, awards prizes for socio-legal scholarship, and generally works to encourage socio-legal inquiry in Canada and internationally.

Thank you for your attention to this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Debra Parkes', with a long, sweeping flourish extending to the right.

Debra Parkes
President
Canadian Law & Society Association
parkesd@ms.umanitoba.ca

cc: Vern Krishna, Chair, Licensing and Accreditation Task Force, LSUC

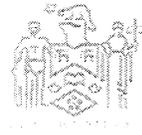
Appendix A

**PROPOSED PRINCIPLES TO ACCOMPANY
ANY FLSC STANDARDS FOR APPROVED COMMON LAW DEGREES**

**Adopted by the Board of the Canadian Law & Society Association
January 24, 2009**

Recognizing the excellence of existing Canadian Law Faculties and the partnerships that are required for effective functioning of the Canadian continuum of legal education:

- *Governing and accrediting bodies undertake to seek the fullest possible participation and approval of the legal academy in adopting, implementing or amending the proposed list of competencies.*
- *Governing bodies will undertake not to use their accrediting authority for any purpose except the protection of the public against demonstrated harms attributable to shortcomings in the education of entrants.*
- *Governing and accrediting bodies will commit themselves to respecting the intellectual freedom of individual professorial and student members of law faculties and the autonomy of law faculties to adopt the scholarly and pedagogic approaches they deem best.*
- *Governing and accrediting bodies will respect the decision-making and resource allocation processes established within the university system.*
- *Governing and accrediting bodies will assist law faculties to acquire any additional human and material resources they need to implement the new requirements.*
- *Governing and accrediting bodies will ensure that their practising members possess and maintain the same competencies as law schools are to be required to impart and students to acquire.*



The Law Society of Upper Canada | Barreau
du Haut-Canada

November 26, 2009

Professor Debra Parkes
President
Canadian Law & Society Association
7th Floor, Loeb Building
Carleton University
1125 Colonel By Drive
Ottawa, Ontario
K1S 5B6

Office of the Treasurer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

tel 416-947-3415
fax 416-947-7609

Dear Professor Parkes:

Re: Federation Task Force Report on the Canadian Common Law Degree

Thank you for your letter dated October 27, 2009 and a copy of your December 2008 submission to the Federation Task Force on the Canadian Common Law Degree, which I understand the Task Force considered along with the other submissions it received.

The Law Society of Upper Canada's Licensing & Accreditation ("L&A") Task Force has been provided with copies of your correspondence and submissions, which set out your concerns. The consultation period is now over, but the L&A Task Force has had the opportunity to hear the concerns the legal academy has raised on this important issue. Its report will make recommendations that Convocation will consider in making its determination on the federation Task Force report.

Thank you for your input.

Yours very truly,

W. A. Derry Millar
Treasurer

cc. Vern Krishna, Chair L&A Task Force

Malcolm Heins



uOttawa

Université d'Ottawa
Faculté de droit
Section de common law

University of Ottawa
Faculty of Law
Common Law Section

October 27, 2009

Treasurer Derry Millar
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

FAX: 416-947-5263

Dear Treasurer Millar:

Re: *Final Report of the FLSC Task Force*

We understand that the Law Society of Upper Canada Licensing and Accreditation Task Force will be meeting shortly to discuss issues surrounding the *Final Report* of the Federation of Law Societies of Canada Task Force on the Canadian Common Law Degree. As you may know, the FLSC Task Force's deliberations and recommendations are of considerable interest to Common law faculty members here at the University of Ottawa.

This past February our Faculty Council formally adopted a motion to approve the following *Proposed Principles to Accompany the FLSC Standards for Approved Common Law Degrees*:

**PROPOSED PRINCIPLES TO ACCOMPANY THE FLSC
STANDARDS FOR APPROVED COMMON LAW DEGREES**

Recognizing the excellence of existing Canadian Law Faculties and the partnerships that are required for effective functioning of the Canadian continuum of legal education:

- *Governing and accrediting bodies undertake to seek the fullest possible participation and approval of the legal academy in adopting, implementing or amending the proposed list of competencies.*
- *Governing bodies will undertake not to use their accrediting authority for any purpose except the protection of the public against demonstrated harms attributable to shortcomings in the education of entrants.*

☎ 613-562-5794
☎ 613-562-5124

57 Louis-Pasteur
Ottawa ON K1N 6N5 Canada
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- 2 -

- *Governing and accrediting bodies will commit themselves to respecting the intellectual freedom of individual professorial and student members of law faculties and the autonomy of law faculties to adopt the scholarly and pedagogic approaches they deem best.*
- *Governing and accrediting bodies will respect the decision-making and resource allocation processes established within the university system.*
- *Governing and accrediting bodies will assist law faculties to acquire any additional human and material resources they need to implement the new requirements.*
- *Governing and accrediting bodies will ensure that their practising members possess and maintain the same competencies as law schools are to be required to impart and students to acquire.*

University of Ottawa Common Law faculty members share the concerns and criticisms expressed by the Canadian Association of Law Teachers and Canadian Law and Society Association in their December 2008 *Response to the FLSC Task Force's initial Consultation Paper*.

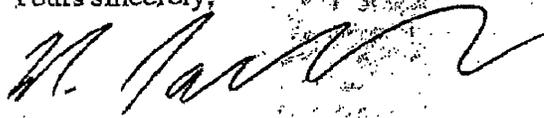
In particular, the CALT/CLSA submit that the exclusive focus on the 'Canadian Common Law Degree' is fundamentally misconceived and raises serious jurisdictional, pedagogical and resource-issues that are ignored by the Task Force; that meaningful participation from all affected parties (including legal educators, law students and diverse organizations of lawyers) is urgently required; that the Task Force's claims are not evidence-based and that empirical research and data collection are necessary before any further steps are taken in relation to the significant and complex issues raised. If anything, the discussion and recommendations contained in the FLSC Task Force's *Final Report* heighten, rather than address or mitigate any of these serious concerns.

Law faculties in Ontario are publicly funded post-secondary institutions, governed by the Universities to which they belong, pursuant to statutory authority granted by the Province. The legal authority and powers that would be required to regulate our faculty and curriculum in the manner proposed in the FLSC's *Final Report* are nowhere evident in the *Law Society Act*. We strongly urge the members of the LSUC Licensing and Accreditation Task Force, and Convocation as a whole, to reject the FLSC's report and recommendations. Instead, in keeping with the 'Proposed Principles' adopted by our Faculty Council, we call upon you to enter into meaningful discussions with the legal academy, our parent Universities, and other affected parties.

- 3 -

As the CALT/CLSA point out, an open, representative and informed dialogue 'is a prerequisite to developing recommendations that will genuinely address the key issues that are now confronting those who are responsible for all aspects of legal education in Canada.' In this regard, the November 2008 LSUC *Submission* to the FLSC Task Force represents an important and very useful starting point.

Yours sincerely,



Professor Martha Jackman, L.S.M.
Shirley E. Greenberg Chair for Women and the Legal Profession
Faculty of Law, Common Law Section
University of Ottawa

c.c. Vern Krishna, Chair, Licensing and Accreditation Task Force, LSUC
Thomas Conway, Federation of Law Societies Council Representative
Allan Rock, President, University of Ottawa
Bruce Feldthusen, Dean, Faculty of Law, University of Ottawa



The Law Society of
Upper Canada

Barreau
du Haut-Canada

December 2, 2009

Professor Martha Jackman, LSM
University of Ottawa
Faculty of Law
Common Law Section
57 Louis Pasteur
Ottawa, Ontario
K1N 6N5

Office of the Treasurer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

tel 416-947-3415
fax 416-947-7609

Dear Professor Jackman:

Re: Your letter of October 27, 2009

Thank you for your letter of October 27, 2009 concerning the Final Report of the Federation Task Force on the Canadian Common Law Degree.

I have provided the Law Society of Upper Canada's Licensing & Accreditation Task Force with a copy of your correspondence. Its report will make recommendations that Convocation will consider in making its determination on the Federation Task Force report.

Thank you for your input.

Yours very truly,



W. A. Derry Millar
Treasurer

cc. Vern Krishna, Chair L&A Task Force
Thomas Conway, Federation of Law Societies Council Representative
Allan Rock, President, University of Ottawa
Bruce Feldthusen, Dean, Faculty of Law, University of Ottawa
Malcolm Heins



Council of Canadian Law Deans
Conseil des doyens et
des doyennes des facultés
de droit du Canada

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November 20th, 2009

By e-mail and ordinary mail: dmillar@weirfoulds.com

Mr. W. A. Derry Millar, Treasurer
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Mr. Millar:

**Re: Final Report of the Federation of Law Societies of Canada
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans with regard to the Federation of Law Societies of Canada's Task Force Report on the Common Law Degree. It is our understanding that the Report and its Recommendations have been referred to the provincial and territorial Law Societies for consideration and potential adoption. In view of the implications of the Report and its Recommendations for Canada's law schools, we believe it is important for the CCLD to share our perspective and our concerns with you.

OUR INVOLVEMENT WITH THE TASK FORCE AND ITS WORK

It would be helpful to begin by describing the process followed by the Federation of Law Societies in undertaking this work and the relationship that the Canadian Law Deans have had with this process. As you will know, the Task Force was established in the fall of 2007 to address two significant issues: i) the criteria to be applied in the consideration of applications to establish new law schools in Canada; and ii) the criteria to be applied by the National Committee on Accreditation in the consideration of the qualifications of foreign trained lawyers, the latter within the context of provincial legislation in some provinces mandating fair processes for the consideration of such applications.

Since both of these issues necessarily involved a consideration of the existing understanding of a common law degree in Canada, it was natural that these issues would engage the interest and attention of legal academia and in particular the interests and expertise of the Canadian Law Deans.

The Task Force that was established by the Federation of Law Societies of Canada had an appreciation of the CCLD's unique role and expertise. In November of 2007 the Chair of the Task Force, John Hunter, Q.C., met with the CCLD to inform the Law Deans of the Task Force of its composition, its mandate, its contemplated processes and its interest in a degree of engagement with the Law Deans. I think it is fair to say that the Deans were surprised to learn of the establishment of the

Task Force, its plans and its composition. Given the issues to be addressed, we were also surprised to learn that there was no interest on the part of the Federation in including representatives of the Canadian Law Deans or legal academia on the Task Force. This was all the more surprising given the active and constructive contribution that the Canadian Law Deans have made to the work of the National Committee on Accreditation, one of the central subjects for Task Force consideration. Notwithstanding this, the CCLD agreed in November of 2007 that it would offer to work constructively with the Task Force. We established a Working Group of Law Deans, composed of Dean Nicholas Kasirer of McGill Law School, Dean Patrick Monahan of Osgoode Hall Law School and myself to provide information, assistance and advice to the Task Force. We were, at our own expense, essentially at the disposal of the Force whenever it felt the need of our involvement. Consistent with this commitment, we met whenever the Task Force requested us to do so, and provided the collective perspective on the CCLD through various reports and letters from the CCLD to the Task Force. While we were not always in agreement with the need for this project or with Task Force thinking, I believe that our engagement was undertaken in a spirit of respect for the members of the Task Force and their assignment. We believe that the Task Force engaged with us in a similar spirit of mutual respect. The Task Force made it clear that it had complete confidence in the state of legal education in Canada, and in the quality of the existing law schools, and that there was no plan to 'remake' law schools in a new image. This expression of confidence in our law schools inspired a genuine commitment on the part of the CCLD to assist the Task Force with its work. In this spirit we did our best to provide a clear understanding of the state of legal education in Canada and the implications of the various options that we understood to be under consideration by the Task Force.

This is particularly evident in our submissions to the Task Force in response to its October 2008 Consultation Paper. In a series of communications throughout the process, including two lengthy submissions to the Task Force in June of this year, (the latter two are attached for your consideration), we shared our perspective on matters of critical importance to legal education and to the Task Force. Concurrent with these submissions we communicated a willingness to continue to be engaged with the Task Force. We heard nothing further until the Task Force had completed its work and submitted its Report.

While some of the perspectives provided by us to the Task Force were incorporated in its final Report, one critical concern of the Canadian Law Deans was ignored and some matters of concern were introduced in the final Report without any request for input from the CCLD or any other group. I will make further reference to these matters later in the letter.

OUR PERSPECTIVE IN RELATION TO THE REPORT AND ITS RECOMMENDATIONS

As you will know, the Task Force has produced a series of recommendations that seek to establish a new set of standards for an 'approved common law degree' in Canada. While we have offered suggestions to the Task Force on alternatives to this approach, we acknowledged the Task Force's commitment to this objective in our June 1, 2009 letter to the Task Force. Indeed, in that letter we signaled support for the 'competencies' approach being contemplated by the Task Force. Such an approach is consistent with much modern thinking about legal education, and is being incorporated into the curricula of a number of our law schools in Canada. We urged the Task Force to follow this 'competencies' approach comprehensively, as had been recommended by the Law Society of Upper Canada in its own submission to the Task Force in 2008. We would have welcomed such an approach. For reasons that are not clear to us, the Task Force elected not to do so, and in particular in relation to its recommendations regarding a mandatory, stand-alone Legal Ethics and Professionalism, has recommended an approach that is contrary to its own previously stated approach to competencies. This deviation in approach is more than a matter of pedagogical debate or semantics. While the Canadian law Deans generally have little objection to a competencies-based approach, a requirement related to a specific new mandatory course is more problematic. A 'competencies' approach confirms the legal profession's confidence in our law schools, and in our ability to fashion programs that can

meet our educational objective of delivering a rigorous academic education for our students while at the same time providing us with the flexibility and imagination to design a curriculum that will ensure that the legal profession's expected competencies are learned by our students. The dictate of any specific 'course' requirement makes the opposite statement. It 'directs' legal education, and prevents law schools from achieving 'competency' in our students through flexibility, imagination and innovation, the specific responsibilities of legal educators, the specific prerogative of legal education and the very work that the Task Force signaled was being well done in our law school. In addition, we are surprised and concerned that the Task Force has gone further, identifying what it expects – perhaps requires – to be the content of this mandatory course. Regardless of the course under consideration in this regard, we see this whole approach as unprecedented and inappropriate.

Second, to our surprise, the Task Force elected to include in its final Report a recommendation that establishes a compliance requirement for a law school to be 'approved'. This was a surprise to us for two reasons. First, while there was a passing reference to 'compliance' in the Task Force's 2008 Consultation Paper, the Task Force did not set out any questions in relation to compliance or compliance mechanisms and did not invite any feedback on this issue. Second, and perhaps more important from the perspective of the Canadian law Deans, we were advised that the Task Force intended to leave this issue to another day and another body. We are troubled that a recommendation of this sort, on a matter of critical importance to legal education in general and to the Canadian Law Deans in particular, would be included in the final Report with no dialogue with us.

The Canadian Law Deans have concerns with additional aspects of the Report. These include the adoption of some 'legal knowledge' competencies whose meaning we have struggled to understand, as well as a variety of technical, or 'institutional' matters that, unresolved, where implementation could jeopardize various aspects of our existing programs. In our view these are also matters of sufficient importance that any approval of the Report and Recommendations should await their clarification and resolution.

THE APPROACH WE RECOMMEND

The decisions your law society will be making in relation to the Report and its Recommendations will necessarily be undertaken within the context of your responsibility to regulate in the public interest. In our view, this responsibility can best and only be achieved through a process of engagement with legal education, and in particular with the Canadian Law Deans, in advance of making any decisions regarding the Task force Report and its Recommendations. The work of the Task Force is important to the legal profession and to Canada's law schools. It is the most significant examination of the nexus between our law schools and the legal profession in over 40 years. The Task Force has done much good work, but in our opinion it has not gotten all of the questions right. And it is important, with a project of this significance, that both law societies and the legal education community make every effort to make the best decisions possible. We believe that it is possible to develop, together, a set of recommendations that can strengthen the Report that is before you for consideration. There is ample time to do this. We note that, even within the context of the Report's own recommended timetable, implementation would not take place until 2015.

For these reasons, we recommend that you defer any decisions in relation to the Report and its Recommendations. We recommend that a dialogue be undertaken between the law societies and the Law Deans to work out the difficulties presented by the Task Force's Report and Recommendations and to put in place the necessary refinements and clarifications to optimize the Task Force's work and make it meaningful, effective and beneficial for legal education, for the legal profession and for the public interest. We are prepared to make a commitment to such a project. It would be a signal that those who are privileged to be charged with the regulation of the legal profession in the public interest wish to strive for the 'best' in this aspect of their regulatory responsibilities. It would also honour the

work of the Task Force, whose members have made a genuine and heartfelt effort to solve some seemingly intractable problems facing the legal profession of today.

Failing this, we urge that any adoption of the Report and its Recommendations be 'in principle' only. There are many unresolved issues related to the Report, and we believe that these must be resolved before law societies give their imprimatur to the features of any new regulatory regime. This is again a responsibility to ensure that the model you approve best serves the public interest. In our view the best process to address the unresolved issues would be a joint committee of the legal profession and the Council of Canadian Law Deans, co-chaired, and with equal representation from these two communities of interest. We are committed to undertaking this work in a principled and timely way, with a view to developing – together - the best model we possibly can.

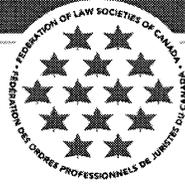
At the present time, some Canadian Law Deans are unable to support the Report and its Recommendations in their current form. We believe that with good will from the Deans and from the leaders of the legal profession, differences can be bridged and a suitable model can be developed. Such a model can meet the immediate challenges faced by the legal profession in ways that will build upon the continuing evolution and strengthening of legal education in Canada. It can also reinforce the strong and positive relationship between our profession and our law schools.

Sincerely,

A handwritten signature in black ink that reads "Brent Cotter". The signature is written in a cursive, flowing style.

W Brent Cotter
President
Council of Canadian Law Deans

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

November 24, 2009

Mr. John J. L. Hunter, Q.C.
Hunter Litigation Chambers
1040 West Georgia Street, Suite 2100
Vancouver, BC V6E 4H1

Dear Mr. Hunter,

The President of the Council of Canadian Law Deans, Dean Brent Cotter, has written to the Presidents of Canada's law societies with respect to the work of the Task Force on the Canadian Common Law Degree, which you chaired. In the attached letter, Dean Cotter makes a number of observations regarding the consultations between your Task Force and the Council of Canadian Law Deans and raises issues about how certain specific matters were dealt with in the Task Force recommendations.

On behalf of the Federation, I seek your observations and comments regarding Dean Cotter's letter so I can share them with the law societies to enhance their debate of the Task Force's Report.

Thank you for your continuing efforts.

Sincerely,

John Champion
President

Encl.

c.c. Dean Brent Cotter, President
Council of Canadian Law Deans

Hunter Litigation Chambers

HUNTER / BERARDINO / HARRIS / MCEWAN

November 25, 2009

BY EMAIL

Mr. John A. Champion, President
Federation of Law Societies of Canada
World Exchange Plaza
1810 - 45, rue O'Connor Street
Ottawa, ON K1P 1A4

Dear Mr. Champion:

Re: November 20, 2009 letter from the Council of Canadian Law Deans

I am in receipt of your letter dated November 24, 2009, in which you provided me with a copy of the November 20, 2009 letter from the Council of Canadian Law Deans ("the Council") and requested my comments on it. As Chair of the Federation Task Force on the Canadian Common Law Degree, I agree that it is important to clarify some of the points made in the letter so that law societies will be able to fully assess the recommendations before them in the Task Force's final report dated October 2009 ("the Task Force Report").

Task Force's Mandate

The Deans' letter states that the decisions law societies will make in relation to the Task Force Report "will necessarily be undertaken within in the context of [law societies'] responsibility to regulate in the public interest." As Chair of the Federation Task Force I also took it as a given that the Task Force's mandate flowed from this responsibility. The Federation Task Force was established in June 2007 to,

- a) review the criteria currently in place establishing the approved LL.B./J.D. law degree for the purposes of entrance to law societies' bar admission/licensing programs ("the approved LL.B./J.D. degree") and determine whether modifications are recommended;
- b) if modifications are recommended, to propose a national standard for the approved LL.B./J.D. degree; and
- c) consider the matters in (a) and (b) in relation to the National Committee on Accreditation requirements for granting a certificate of qualification and determine what changes if any should be made to those requirements. By articulating standards for the approved LL.B./J.D. law degree the Federation can more clearly identify for

internationally trained candidates and those with civil law degrees from Quebec the meaning of “equivalent to a Canadian LL.B./J.D. degree.”

While the Council letter is correct that issues related to the NCA and new law school proposals were part of the Task Force’s analysis the mandate was primarily to consider the appropriate criteria for entry to bar admission programs. Once these were determined they could be applied as well to the NCA and new law school context.

Involvement of CCLD with the Task Force

The Council’s letter accurately comments on the Task Force’s appreciation of the CCLD’s unique role and expertise. As the letter confirms it and the Task Force engaged with each other in a spirit of mutual respect.

While it is correct that the Task Force membership consisted only of law society representatives the Law Deans’ input was sought immediately and continued throughout the process. Among other steps the Task Force took to address the Council’s submissions and views, it postponed its final report, originally intended for March 2009, to obtain further input from the Council. The Task Force paid particular attention to the views the working group of the Council expressed to it in January 2009 and to the letters the Council wrote to the Task Force on June 1, 2009 and June 29, 2009, both of which are included in the Task Force’s Report and are referred to in the Council’s November 20, 2009 letter.

While the Task Force did not accept all of the Council’s submissions, it is not accurate to say that the Task Force ‘ignored’ them. Quite the contrary is the case. I remain convinced that the Task Force Report and the views the Council has expressed are significantly more similar than the November 20, 2009 letter suggests.

Consultation Process and Task Force Recommendations

The Council’s November 20, 2009 letter expresses a concern that the Task Force did not consult with it on a number of issues on which it made recommendations in the final report. I am not sure on what basis the Council raises this concern as the Task Force’s consultation process was public and detailed.

In its September 2008 Consultation Paper the Task Force stated its preliminary view that there should be a required standard for entry to bar admission courses and that the standard “should address competencies in fundamental areas of substantive knowledge, legal skills and professional responsibility.” It then outlined its proposed competencies and stated that the one exception to relying on competencies should be a stand-alone course in professional responsibility (renamed ethics and professionalism in its final report). It then discussed compliance, identifying three possible approaches (the status quo, the examination model, and the approved law degree.) The approved law degree option was described as follows:

Under this option a required standard would be established...and law faculties would demonstrate what they are doing to ensure that their graduates have achieved the required competencies.

The consultation paper also discussed a number of possible institutional requirements that could be part of the approved law degree. It did so in direct response to the Council of Canadian Law Deans' persuasive submissions that if the Task Force did no more than articulate a list of competencies without discussing institutional requirements, it would undermine the quality legal educational standard that exists in today's law faculties.

Since the Task Force sought input on all these issues in the consultation paper, it is somewhat surprising to see in the Council's November 20, 2009 letter that no such input was sought. Moreover, the Council's June 1, 2009 and June 29, 2009 letters, referred to earlier, provide input on many of the issues, including the competencies, a compliance mechanism and institutional requirements.

In making its recommendation on a compliance mechanism, the Task Force paid particular attention to the Council's submission in its June 1, 2009 letter that "the Task Force should recommend only those requirements for law school compliance that are necessary for fulfillment of law societies' mandated public interest responsibilities." Moreover, the Task Force made it clear that the details of the approach should be left to the implementation committee.

I hope this letter clarifies some of the issues raised in the Council's November 20, 2009 letter.

Yours truly,



John J.L. Hunter, Chair
Task Force on the Canadian Common Law Degree

JJLH/smr

cc: Dean Brent Cotter, President
Council of Canadian Law Deans



The Law Society of
Upper Canada

Barreau
du Haut-Canada

December 2, 2009

W. Brent Cotter
President
Council of Canadian Law Deans
57 Louise Pasteur
Ottawa, Ontario
K1N 5N5

Office of the Treasurer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

tel 416-947-3415
fax 416-947-7609

Dear Dean Cotter:

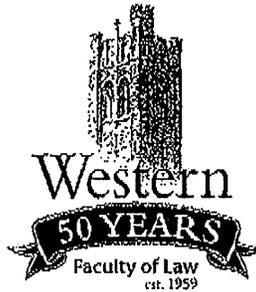
Re: Your letter dated November 20, 2009

Thank you for your letter dated November 20, 2009 on the Final Report of the Federation Task Force on the Canadian Common Law Degree. The Law Society has also received copies of John Campion's letter to John Hunter, the Chair of the Federation Task Force, dated November 24, 2009, and John Hunter's reply, dated November 25, 2009. I have provided all this correspondence to the Law Society's L&A Task Force, which is considering the Federation Task Force report and will be making recommendations to Convocation.

Thank you.

Yours very truly,

W. A. Derry Millar
Treasurer



November 25, 2009

URGENT - BY FAX: (416) 947-3924

Professor Vern Krishna, CM, QC
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

De Vern,

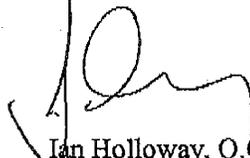
I am writing in my capacity as the Chair of the Ontario Law Deans group, and am writing on behalf of all of us. I apologize for the urgency of this letter, but I understand that the Licensing and Accreditation Task Force is meeting tomorrow morning, and I wanted to make sure that you received this beforehand.

The letter is simply to reiterate our support for the letter that was sent you last week by our colleague, Dean Brent Cotter of the University of Saskatchewan. I know that some members of the Task Force are of the view that the only job that remains for the Law Society is to vote the Federation Task Force's report up or down. I would hope, though, that after reading Dean Cotter's letter, a different feeling might emerge. As you agreed at our meeting last month, the step that we are about to take is one that will forever alter the course of legal education in Ontario. And I can't help but note that two previous agreements of 1957 and 1969 – which together have served the cause of legal education in Canada well – were the product of the process of agreement with the Ontario Law Deans. I don't mean to belabour the point that I made at the close of our meeting, but we really have come a long way in the past decade or so in terms of our engagement with one another. I completely agree that we should strive for a consistency in the standards of quality of legal education across the country. But I continue to believe – as past experience has shown – that we are much more likely to achieve positive outcomes if we worked together, than if a report is imposed upon us from the outside. Indeed, I don't need to tell you that the whole of the "great debate" that Ian Kyer wrote about in his book was engendered by a series of attempts by the profession to impose their views about legal education on the law schools. The *last* thing that we want now, is to return to some sort of state like that.

- 2 -

Again, on behalf of the Ontario law schools, I want to say that Dean Cotter's letter captures our views perfectly well.

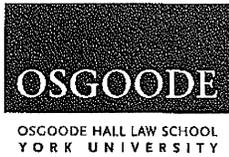
With warmest wishes always,

A handwritten signature in black ink, appearing to read 'Ian Holloway', written over a vertical line.

Ian Holloway, Q.C.
Dean and Professor of Law

IH:nl

cc: Ontario Law Deans
Dean Brent Cotter, Q.C.



December 3, 2009

Office of the Dean

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Ms. Sophia Sperdakos
Policy Counsel
Policy Secretariat
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario M5H 2N6

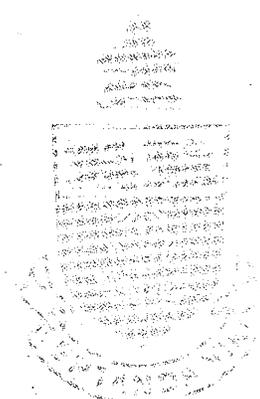
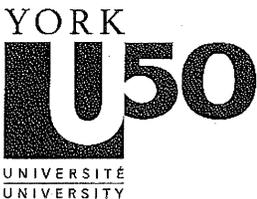
Dear Ms. Sperdakos,

Re: FLSC Final Report of the Task Force on the Canadian
Common Law Degree – Motion from Faculty Council

As alluded to in my letter of October 27, a motion was brought to
Faculty Council on November 30 and the motion was passed, a copy of
which is attached for your information.

Yours truly,

Jinyan Li
Interim Dean



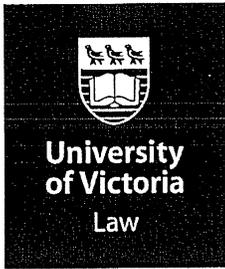
**Osgoode Hall Law School
of York University**

Meeting of Faculty Council

Monday, November 30, 2009

Notice of Motion

Moved by Interim Dean Jinyan Li and **seconded** by Professor Bruce Ryder that for the reasons set out in Dean Li's letter dated October 27, 2009 and the Canadian Council of Law Deans' letter dated November 20, 2009, Faculty Council of Osgoode Hall Law School cannot support the implementation of the recommendations of the FLSC's Final Report of the Task Force on the Common Law Degree (October 2009) in their current form and urges the Law Society of Upper Canada to withhold approval of the Report until outstanding issues have been resolved through a process involving dialogue between representatives of the law societies and the law schools. Failing this we urge that any adoption of the Report and its Recommendations be 'in principle' only to allow resolution of the outstanding issue.



Faculty of Law
Office of the Dean
University of Victoria
Fraser Building
Room 108

PO Box 2400 STN CSC
Victoria British Columbia
V8W 3H7 Canada

Tel 250-721-8147
Fax 250-472-4299
Web www.law.uvic.ca

December 9, 2009

Richard N. Stewart, Q.C.
Cook Roberts LLP
700-1175 Douglas Street
Victoria, BC V8W 2E1

Dear Richard:

Re: Faculty of Law Response to the Federation Task Force Report

I am writing to inform you that Faculty Council, the governing body of the Faculty of Law, University of Victoria, met today and passed the following motion regarding the Final Report of the Task Force on Canadian Common Law Degree that was released by the Federation of Law Societies in October, 2009:

The Faculty of Law, University of Victoria supports the position of the Council of Canadian Law Deans ("CCLD"), set out in its letter of November 20, 2009, that a more serious engagement with legal educators is required before moving forward on the Task Force Report and its recommendations.

In particular we support the concerns raised by the CCLD regarding the impact of the Task Force recommendation imposing a specific course requirement. We endorse the CCLD position that specifying a mandatory course impinges on the ability of legal educators to meet their core responsibility to develop pedagogically sound programming in a flexible, imaginative and innovative manner.

We also support the concern raised by the CCLD regarding the establishment of a compliance requirement for a Law School to be 'approved'.

Finally, we support the CCLD's recommendation that the way forward requires a newly constituted committee co-chaired by a member of the CCLD and of the Legal Profession. We would add to the CCLD's recommendation regarding process, however, that membership of the committee should include teaching faculty as well as Deans.

The motion was passed unanimously by Faculty Council. You will see that Faculty Council strongly endorses the position of the Canadian Council of Law Deans, and in addition requests that membership of a newly-constituted committee include teaching faculty as well as Deans.

Please share this letter with member of the Credentials Committee. At Faculty Council's instruction, I will also be sending a copy of the motion to the Benchers of the Law Society of British Columbia, and the Presidents of other Canadian Law Societies.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Greschner".

Donna Greschner
Dean of Law



To:
Cc:
Bcc:
Subject: Fw: NCA comments on Federation Task Force report

From: "Jonathan Herman" <JHerman@flsc.ca>
To: 'Alan Treleaven ' <atreleaven@lsbc.org>, 'Allan Fineblit' <afineblit@lawsociety.mb.ca>, 'Christian Tremblay ' <christian.tremblay@cdnq.org>, 'Darrel Pink ' <dpink@nsbs.org>, 'Don Thompson' <Don.Thompson@lawsociety.ab.ca>, Frederica Wilson <FWilson@flsc.ca>, 'Howard Kushner' <Howard.Kushner@lawsociety.ab.ca>, 'Jacques Houle' <jhoule@barreau.qc.ca>, 'Katherine Corrick' <kcorrick@lsuc.on.ca>, 'Law Society of Nunavut' <lawsociety@qiniq.com>, 'Linda Whitford ' <linda.whitford@lawsociety.nt.ca>, 'Lynn Daffe' <lynn.daffe@lawsocietyyukon.com>, 'Malcolm Heins ' <mheins@lsuc.on.ca>, 'Marc Richard ' <mrichard@lawsociety-barreau.nb.ca>, 'Marilyn Billinkoff' <mbillinkoff@lawsociety.mb.ca>, 'Peter Ringrose' <peter.ringrose@lawsociety.nf.ca>, 'Susan Robinson' <srobinson@lspei.pe.ca>, 'Timothy McGee ' <tmcgee@lsbc.org>, 'Tom Schonhoffer ' <tom@lawsociety.sk.ca>
Cc: Frederica Wilson <FWilson@flsc.ca>, Deborah Wolfe <DWolfe@flsc.ca>, Bob Linney <Blinney@flsc.ca>
Date: 01/04/2010 09:29 AM
Subject: RE: Task Force on the Canadian Common Law Degree - NCA Comments / Groupe d'étude sur le diplôme canadien en common law - Commentaires du CNE

MESSAGE EN FRANÇAIS À LA SUITE

Good morning everyone and Happy New Year.

Further to my e-mail below, I understand that some of you have inquired about the matters raised in the memorandum from the NCA to the Federation Executive. Federation President John Campion has asked me to advise you that, after consultation with Deborah Wolfe, the Managing Director of the NCA, all such matters can be addressed by the Federation at the time of implementation of the Hunter Task Force recommendations in the event that the Task Force Report is approved by the law societies.

Best regards,

Jonathan

Bonjour et bonne année à tous.

Suite à mon courriel ci-dessous, j'ai cru comprendre que certains ou certaines d'entre vous ont demandé des renseignements au sujet des questions soulevées dans la note de service qui a été envoyée par le CNE au Comité exécutif de la Fédération. Le président de la Fédération, John Campion, m'a demandé de vous informer qu'après avoir consulté Deborah Wolfe, directrice de l'exploitation du CNE, il a été convenu que la Fédération pourra régler toutes ces questions au moment de la mise en œuvre des recommandations du Groupe d'étude Hunter si le Rapport du Groupe d'étude est approuvé par les ordres professionnels de juristes.

Salutations cordiales.

Jonathan

From: Jonathan Herman

Sent: December 17, 2009 4:29 PM

To: 'Alan Treleaven ' ; 'Allan Fineblit' ; 'Christian Tremblay ' ; 'Darrel Pink ' ; 'Don Thompson' ; Frederica Wilson ; 'Howard Kushner' ; 'Jacques Houle' ; 'Katherine Corrick' ; 'Law Society of Nunavut' ; 'Linda Whitford ' ; 'Lynn Daffe' ; 'Malcolm Heins ' ; 'Marc Richard ' ; 'Marilyn Billinkoff' ; 'Peter Ringrose' ; 'Susan Robinson' ; 'Timothy McGee ' ; 'Tom Schonhoffer '

Cc: Frederica Wilson ; Deborah Wolfe ; Bob Linney

Subject: Task Force on the Canadian Common Law Degree – NCA Comments / Groupe d'étude sur le

diplôme canadien en common law – Commentaires du CNE

MESSAGE EN FRANÇAIS À LA SUITE

Good afternoon everyone,

The Federation Executive has requested that I forward to you the attached memorandum from the National Committee on Accreditation. You may wish to take this into account as part of your law societies' consideration of the Report from the Task Force on the Canadian Common Law Degree, as well as its implementation, in the event that the Task Force recommendations are approved.

Kind regards,

Jonathan

Bonjour.

Le Comité exécutif de la Fédération m'a demandé de vous envoyer la note de service ci-jointe provenant du Comité national sur les équivalences des diplômes de droit. Votre ordre professionnel pourra tenir compte de ce document lorsqu'il examinera le rapport du Groupe d'étude sur le diplôme canadien en common law, ainsi que sa mise en œuvre si les recommandations du Groupe d'étude sont approuvées.

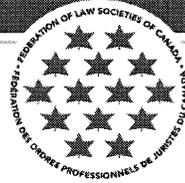
Sincères salutations.

Jonathan

Jonathan G. Herman

Chief Executive Officer / Premier dirigeant

**Federation of Law Societies of Canada /
Fédération des ordres professionnels de juristes du Canada**
World Exchange Plaza
1810 - 45, rue O'Connor Street
Ottawa, Ontario, Canada K1P 1A4
Direct: (613) 236-7250, ext. 224
Fax: (613) 236-7233
jherman@flsc.ca
www.flsc.ca



MEMORANDUM

TO: FEDERATION EXECUTIVE COMMITTEE

FROM: NATIONAL COMMITTEE ON ACCREDITATION

DATE: November 27, 2009

RE: Hunter Task Force Report

-
1. The purpose of this Memorandum is to provide the comments and perspective of the National Committee on Accreditation (the “NCA”) to the Federation of Law Societies of Canada (the “**Federation**”) on the Hunter Task Force Report on Common Law Degrees (the “**Report**”).
 2. The NCA understands that the Report has been sent by the Federation to law societies, for comment.
 3. The Report describes in a limited way the consequences that the Report, if implemented, may have for the NCA and its review of internationally trained graduates to determine comparability to a Canadian common law degree. The NCA believes it to be important that the Federation have the benefit of the NCA’s perspective, particularly in respect of four areas.
 4. The Report recommends [at page 30] that there be a requirement on Canadian law schools to teach skills competencies. Those skills competencies are described in the Report as:
 - (a) problem solving;
 - (b) legal research; and
 - (c) oral and written communications.
 5. The NCA does not currently assess skills competencies, although its assessment of each candidate indirectly provides some gauge of such matters, particularly problem-solving, legal research and written communication ability. Problem solving is tested directly in the NCA examinations, and perhaps little adjustment will be required.

Written communication skills are indirectly tested in the NCA examinations. Testing oral communication skills would be more challenging for the NCA, and might be very expensive. Some overseas schools may teach these three competencies at least as well as Canadian schools. Determining if they do might be difficult unless the relevant accrediting/approving body explicitly requires these in their standards.

6. The second matter relates to distance education. The Report [at page 41] states that a Canadian common law degree should be earned by “primarily in-person education experience”.

7. As part of its policies and its review of each application to it the NCA does consider the mode of delivery of a non-Canadian law degree. However, the current policy may not comply with this proposed standard, depending on the interpretation of “primarily”. The current policy, in respect of candidates who have graduated from a distance learning program at an accredited law school is as follows:

As the Canadian standard for law school is three years, in class, graduates of distance learning programs will normally be required to successfully complete six NCA examinations and eight one semester courses at a Canadian law school. Each candidate’s specific recommendation will depend on his/her individual qualifications.

The ultimate decision made by the law societies in respect of this topic may affect the future considerations of and analysis by the NCA.

8. The third area is that of pre-law educational requirements (which is that the candidate have at least two years of post-secondary education). Such considerations form part of the NCA’s present review of applications. The NCA policies and practices likely satisfy what is proposed in the Report. The approach may have to be modified depending upon the ultimate decision of the law societies.

9. Fourthly, the Report speaks [at page 36] of legal knowledge competencies. That list of competencies includes substantive knowledge competencies. It will be important for the NCA to understand those competencies (if that is the approach ultimately taken by the law societies), as it will need to revise its policies to ensure that competencies apply to its review of applicant qualifications.

10. To the extent that the Report (and the ultimate decisions of the law societies) deals with substantive legal knowledge, the NCA has the following thoughts:

- The NCA list of core common law subjects differs somewhat from the list in the Report’s standards.
- The proposed standards, under Private Law Principles, include “legal and fiduciary concepts in commercial relationships”. Further definition of this will be required for the NCA to assess whether its current policies appropriately assess this standard.

- The NCA currently requires applicants to demonstrate competency in corporate law. This subject is not included in the proposed standards described in the Report.
- The NCA currently requires applicants to demonstrate competency in evidence. This subject is not included in the proposed standards described in the Report.
- The current NCA syllabus in Foundations of Canadian Law is broader than the proposed Foundations of Law standard described in the Report.

The NCA will require clarification on the detailed requirements of the substantive legal knowledge standards in order to revise its policies.

11. The NCA anticipates that in deliberating on the Report the law societies will want to be aware that their decisions and the implementation of those decisions will affect the NCA and its assessment of internationally trained lawyers. We are approaching a situation in which within a few years 20 per cent of those now seeking admission to the legal profession in common law jurisdictions in Canada will be internationally trained lawyers. The consequences on the NCA of those decisions and their implementation will affect many applicants, may require modification to existing policies and procedures and may increase the cost of administering the assessment process. The NCA respectfully requests that the Federation share this Memorandum with the law societies, so that they will have the benefit of the document prior to their deliberations on the Report.

RESPECTFULLY SUBMITTED.



uOttawa

Université d'Ottawa
Cabinet du recteur

University of Ottawa
Office of the President

January 18, 2010

Mr. W. A. Derry Millar
Treasurer
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

**RE: Federation of Law Societies of Canada Task Force Report on the
Canadian Common Law Degree**

Dear Mr. Millar:

The Federation of Law Societies of Canada Task Force Report on the Canadian Common Law Degree is proposing to require that certain courses be taught, some in a particular manner, in University law schools. Failure to comply would result in degrees not being recognized for the purpose of granting admission to the profession. We attach a copy of the report for your reference.

The Federation's proposal has been unanimously rejected by every law dean in Canada, including by each of the 7 law deans in Ontario. The deans' concerns are many, including the failure of the profession to consult meaningfully, the substance of the recommendations themselves, the uncertainty in the report, and the cost implications.

In addition, this proposal would effect a substantial change in the historical relations between the bar and the academy in Ontario. Heretofore, the mandatory content of an Ontario law degree for the purpose of recognition by the bar has historically been arrived at by discussion and negotiation between the bar and the academy.

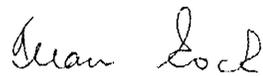
While the Law Society of Upper Canada has every perfect right to determine the requirements that applicants for call to the Ontario bar must satisfy, the Law Society does not have, and has never before asserted, the jurisdiction to mandate unilaterally what is taught in law schools. In this important way, the Federation's proposal, if adopted, will challenge the autonomy of our Universities.

.../2

Before it can take effect in Ontario, the Federation's proposal will have to be adopted by the Benchers of the Law Society of Upper Canada. We are deeply concerned about the implications of this proposal and urge the Law Society to sit down with the Ontario law deans and find a reasonable way forward. We are assured that the deans are quite willing to engage in constructive negotiations with the Law Society towards achieving cooperative governance. Surely that is the way these issues should be addressed.

Thank you for your consideration.

Yours very truly,



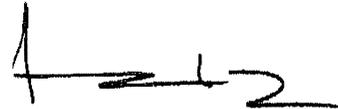
Allan Rock
President and Vice-Chancellor
University of Ottawa



Alan Wildeman
President and Vice-Chancellor
University of Windsor



Mamdouh Shoukri
President and Vice-Chancellor
York University



Amit Chakma
President and Vice-Chancellor
University of Western Ontario

Encl.



The Law Society of
Upper Canada

Barreau
du Haut-Canada

January 20, 2010

Office of the Treasurer

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tel 416-947-3937
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The Honourable Allan M. Rock, P.C., Q.C.
President and Vice-Chancellor
University of Ottawa
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550 Cumberland
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K1N 6N5

Mamdouh Shoukri, Ph.D
President & Vice-Chancellor
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Toronto, Ontario
M3J 1P3

Amit Chakma
President and Vice-Chancellor
The University of Western Ontario
Natural Sciences Centre, Room 120A
London, Ontario
N6A 5B9

Dr. Alan Wildeman
President and Vice-Chancellor
University of Windsor
505 Chrysler Hall Tower
401 Sunset Avenue
Windsor, Ontario
N9B 3P4

Dear Presidents:

Thank you for your letter dated January 18, 2010.

I appreciate the perspective from which the Presidents have written the letter and would like to take this opportunity to assure you that the Law Society of Upper Canada understands and supports the important role of university law faculties in the development of a robust and forward looking legal profession.

At the same time, the Law Society and all law societies who are partners in the Federation of Law Societies of Canada have specific obligations and mandates to regulate the profession in the public interest. Included within that mandate is their responsibility to call qualified candidates to the bar. The *Law Society Act* imposes an obligation on the Law Society of Upper Canada to

ensure that, “all persons who practise law in Ontario...meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.” This responsibility is not limited to the development of law society admission programs, but extends to determining the requirements candidates must meet for entry into those programs.

While your letter raises the suggestion that passage of the report will mark a substantial shift in the Law Society of Upper Canada’s relationship with law faculties, I am confident that in substance the recommendations reflect more continuity in the relationship than not. Indeed, the Federation of Law Societies of Canada Task Force on the Canadian Common Law Degree appears to have gone out of its way to express continuity with current law school practices.

My understanding of the process the Task Force undertook is different from yours. In a letter that the Task Force Chair, John Hunter, wrote on November 25, 2009 in response to correspondence that the Council of Canadian Law Deans sent to law society Treasurers and Presidents Mr. Hunter sets out the extensive nature of the Task Force’s consultation with the Council. He notes that although the Task Force did not agree with every submission the Council made it was influenced by many of them in developing its ultimate recommendations. I enclose a copy of his letter for your information.

Your letter states that the Federation’s proposal has been “unanimously rejected by every law dean in Canada.” That is not my understanding. A number of Law Deans, both in Ontario and elsewhere in the country, have individually expressed a willingness to accept the Task Force recommendations and have already done so. Both the law societies of Alberta and Manitoba have recently approved the Task Force Report with the positive support of their Law Deans. Further in Dean Cotter’s letter to me dated November 20, 2009 (the same letter was sent to other Treasurers and Presidents) he notes in the last paragraph that “*some* Canadian Law Deans are unable to support the report and recommendations in its current form.” These are important facts to which your letter makes no reference and which I respectfully submit suggest a much greater willingness among the Deans to work with the Federation. A careful reading of much of the correspondence from the Council of Canadian Law Deans’ reveals many areas of agreement with the Task Force’s approach, rather than the wholesale rejection your letter suggests.

As Convocation has not yet considered the Federation Report, I cannot comment on what it will decide. However, from my reading of the Report and correspondence from the Council of Canadian Law Deans and the individual positions a number of Deans have expressed on the Report, including a number in Ontario, I believe the implementation process is the appropriate forum at which to resolve any areas of disagreement.

The Council’s letter of June 1, 2009 generally agrees with the Task Force’s “competencies” approach. While there appears to be disagreement with the competency related to commercial relationships, the Council has not raised a concern with most of the competencies. The Council points with approval to the Task Force’s acknowledgement that “competencies” does not mean “courses” and that law schools by and large can satisfy those competencies in a variety of ways as they determine.

The exception to the overall Task Force approach is the recommendation for a stand-alone course in professionalism and ethics. The Task Force has set out why it has recommended as it has in this one case and has made it clear that this is the one exception to the competencies approach. In my view nothing in the Task Force approach suggests a general interest or intent on the part of law societies to generally mandate courses. In fact, the opposite is true. Given that the Law Society of Upper Canada's 1957/69 document of requirements mandated *seven courses*, the Federation Task Force's approach reflects an increased movement away from the mandatory course approach.

It is my view that the implementation issues to which the Task Force refers in its recommendation will necessitate the involvement of the Council of Canadian Law Deans. To the extent there are areas of disagreement between the law schools and the recommendations I am confident that the implementation phase will resolve them.

Yours very truly,

A handwritten signature in black ink, appearing to read "W. A. Derry Millar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

W. A. Derry Millar
Treasurer

University of British Columbia Faculty of Law motion

The Faculty of Law, The University of British Columbia supports the position of the Council of Canadian Law Deans ("CCLD"), set out in its letter of November 20, 2009, that a more serious engagement with legal educators is required before moving forward on the Task Force Report and its recommendations.

In particular we support the concerns raised by the CCLD regarding the impact of the Task Force recommendation imposing a specific course requirement. We endorse the CCLD position that specifying a mandatory course impinges on the ability of legal educators to meet their core responsibility to develop pedagogically sound programming in a flexible, imaginative and innovative manner.

We also support the concern raised by the CCLD regarding the establishment of a compliance requirement for a Law School to be 'approved'.

Finally, we support the CCLD's recommendation that the way forward requires a newly constituted committee co-chaired by a member of the CCLD and of the Legal Profession. We would add to the CCLD's recommendation regarding process, however, that membership of the committee should include teaching faculty as well as Deans.

The motion was passed 14 in favour; 5 opposed and 4 abstained.

Motion on the Final Report of the Task Force on an Approved Common Law Degree

Moved by Professor Bruce Archibald; Seconded by Professor Dawn Russell:

Whereas, the Faculty of Law at Dalhousie University (now the Schulich School of Law) has had a collegial and collaborative relationship with the Nova Scotia Barristers' Society for more than 125 years; and

Whereas, in the process of developing the Final Report of the Task Force on a Canadian Common Law Degree (Oct 2009) the Federation of Law Societies did not adequately consult with Canadian law faculties, law teachers and other constituencies; and

Whereas, the Federation of Law Societies has ignored constructive suggestions from the Canadian Association of Law Teachers and the Canadian Law and Society Association; and

Whereas, the Federation has not dealt with many of the concerns of the Council of Canadian Law Deans; and

Whereas, while it is acknowledged that the Nova Scotia Barristers' Society has jurisdiction over admission to the profession, it has no legal authority to implement many of the recommendations of the Final Report;

BE IT RESOLVED THAT

The Faculty Council of the Schulich School of Law at Dalhousie University does not accept the core recommendations of the Final Report of the Task Force on a Canadian Common Law Degree;

And further, Faculty Council urges the Nova Scotia Barristers' Society not to approve the recommendations of the Final Report;

And further, Faculty Council urges the Nova Scotia Barristers' Society to endorse a new, representative and inclusive joint committee to address the creation of a system for the recognition of university programs as appropriate preparation for the practice of law.

Approved Unanimously.

THE LAWYERS WEEKLY

Task force calls for national law school standards

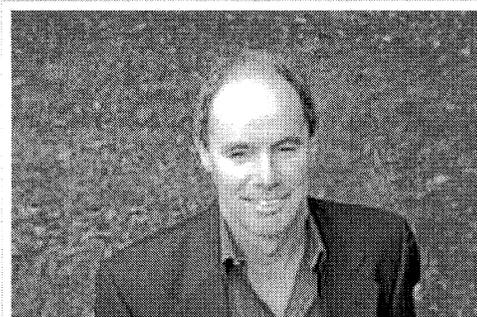
Recommendations will harm academic freedom, says professor

By donalee Moulton
Halifax
November 06 2009 issue

New ground will be broken and Canada's legal landscape will shift significantly if a recommendation from the Federation of Law Societies Task Force to have a made-in-Canada "requirement" for entry to the Bar admission programs of common-law jurisdictions is implemented.

"This is the first time, if adopted, we will ever have a national standard," said John Hunter, chair of the task force and past president of the Law Society of British Columbia.

The task force, which was appointed in June 2007 to review existing academic requirements for entry to Bar admission programs, is proposing: "a national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education."



Richard Devlin

The national standard will ensure a minimum degree of competency by focusing on key knowledge requirements, said Hunter. "We didn't want at the beginning merely to have a course list as many jurisdictions do."

That standard defines education very narrowly — too narrowly, according to Richard Devlin, a professor at the Schulich School of Law at Dalhousie University in Halifax and one of the individuals who drafted responses to the task force on behalf of the Canadian Association of Law Teachers and the Canadian Law and Society Association.

"The report doesn't talk about lifelong learning. The report doesn't talk about Bar courses," he noted.

As a result, Devlin said, "it leads to a flawed analysis. We recommended a national conversation. The Federation of Law Societies rejected this."

Getting to anything even resembling terra firma has taken several interim reports and much discussion — much of it heated — with law schools and Bar societies across the country. "We have tried to address the concerns and modified our views as we went along," said Hunter.

"This is an appropriate place to be at this time," he added. "It is a very reasonable standard."

Many would agree — with important caveats. "I think the task force did quite a good job in terms of responding to some of the criticisms," said Alice Woolley, an associate professor in the Faculty of Law at the University of Calgary.

"In general," she added, "I'm supportive."

For many in the academic community, including Woolley, that support is qualified. One area of concern is requirements around the development of a mandatory ethics course. Those requirements, Woolley contends, are too specific and too directive. "I don't see it as an appropriate relationship between a regulator and a law school."

It is totally contrary, she noted, to the approach the task force took with respect to the issue of competencies.

The emphasis on ethics is a reflection of reality. The course is necessary, said Hunter, not because "of any deficiency in the profession but lawyers are held to a higher standard."

As a result, he noted, the task force felt it was important for students to have a particular course in ethics.

Such a detailed course outline stands in stark contrast to academic freedom, said Devlin. "It's a good idea," he said. "However, it's the law schools who should ultimately determine what they teach."

The task force, Devlin added, has "tried to dictate what should be taught in that course. That is a clear violation of academic freedom. This may be the edge of the wedge."

Whatever the final requirements, they must be enforced. How that will happen is unclear. "There is no enforcement spelled out," said Woolley. "That either means you're not going to enforce or you're not saying how. Accountability means being accountable."

The task force is recommending that a standardized annual report be prepared by law school deans that explains how the regulations have been met. However, noted Woolley, this would not address such issues as student complaints.

Such questions will likely be left to an implementation committee, which the task force has suggested be put in place to move forward on the national requirement.

It's a move the federation has no legal right to make, Devlin said, but which may well explain the federation's driving interest in this whole area. "The task force clearly acknowledged this is about maintaining self-regulation of the legal profession. They want to regulate law schools unilaterally."

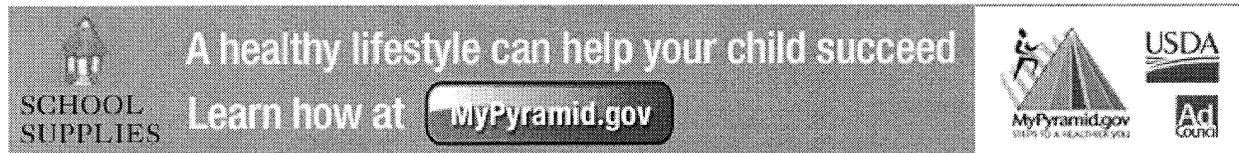
However, he noted, the federation has "no legal authority to regulate law schools."

Hunter doesn't understand all the hoopla. He believes there is no reason for inertia or controversy. "I don't think [this report] should create ripples. The recommendations are not onerous or startling," he said.

"I'm hopeful most people in the academic community will recognize we have tried not to be intrusive but [can] meet our needs at the same time," Hunter added.

Alice Woolley is also hopeful. "I'm hopeful," she added, "that this isn't the final word."

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THE GLOBE AND MAIL

November 6, 2009

Can we teach ethics? When pigs fly

By Clifford Orwin
From Monday's Globe and Mail

Who would be at the head of the line to swear never to become Bernie Madoff if not Madoff himself?

Ethics is a serious business. And that's why, reading in last weekend's Globe and Mail about the gurgling wave of ethics education sweeping North American business schools, I had to laugh.

"MBA programs around the globe," wrote Joanna Pachner, "are rushing to prove that they teach students to be good - not just rich - by revamping their curriculums and encouraging debates about ethical corporate behaviour."

At the same time, she said, MBA students are busy doing their part to prove their moral bona fides, mostly by composing earnest oaths. "I solemnly swear ... never to become Bernie Madoff," as her article was wryly headlined.

Forgive me if the spectacle of MBA students taking oaths to be ethical fills me not with reverence but with giggles. Oaths: Aren't those what people take in courtrooms? And yet the lying there continues apace. Who would be at the head of the line to swear never to become Bernie Madoff if not Mr. Madoff himself?

I'm not suggesting that business students are bad people, or that those who would teach them to be good are any less competent than the rest of us. It's just that the whole notion of teaching ethical behaviour rests on a fundamental misconception - namely, that ethical behaviour can be taught.

Now I'm a pretty good teacher, or so people say. Yet, give me Mr. Madoff for one, two or three courses of ethics instruction and he would still be Bernie Madoff. Would he have learned anything from the experience? Yes, he'd talk a much better game of ethics. Thanks to my teaching, he'd be an even greater menace to society.

This year, I'm teaching 500 students about justice, and I'm not making a single one of them a better person. Those who already aspire to justice may refine their understanding of what it is. (They may also come to see that everything has its problems, even justice.) Those already minded to be good citizens may become more thoughtful ones. I believe strongly in what I do - I just don't think that what I do is to improve the moral character of my students.

A university course is not a revival meeting.

Students indifferent to justice just aren't going to be won over to it by anything that I could say. Or that anyone else could say. A university course is not a revival meeting. I don't cure palsies and I don't plead with students to come forward to declare themselves for ethics. And if I did - and if they did - it wouldn't mean a thing. Talk is cheap. Talk consisting of high-minded oaths and declarations of one's moral seriousness is even cheaper.

By the time a student arrives at university, and *a fortiori* several years later when he ambles on to his MBA, his ethical

character is already firmly set. Whether virtue can ever be taught was already a thorny question for Plato. Whether it can be taught to adults, in a classroom, shouldn't be a thorny question for anyone.

Ethics education has its place, especially in professional schools and if you define it narrowly. Doctors, lawyers and businessmen, too, should be informed of what is forbidden to practitioners of their respective professions. This is only fair to them, as well as being useful for us. When they go astray, and the law steps in to hold them accountable, they'll be all the less able to plead ignorance as an excuse.

But to inform business students of what qualifies as ethical is one thing. To make them more ethical is quite another. Does anyone really think there's one fewer crooked lawyer or cheating doctor in the world because of law school or med school ethics courses?

What can ethics education accomplish, then, beyond informing of professional standards? It can serve as an exercise in self-celebration. Look at us students, how earnest we are in avowing how earnest we are. Look at our institution, how bent we are on making our students better people.

The relation of such palaver to actual conduct is doubtful, to say the least. Take Stanford University, where the student body avows itself as green as Kermit the Frog. Buttressed by a stack of PowerPoint graphs, a friend likes to demonstrate to his students that, as they have grown ever more Gaia-friendly over the years, their consumption of energy in the Stanford dorms has grown ever more mind-boggling. It's those shiny gadgets of theirs. My friend does this for the sheer delicious malice of it, not because he expects a single student to unplug anything. He knows that, among any student body, ethics is primarily a fashionable pose.

Are there genuinely ethical businessmen, doctors, lawyers, police officers, plumbers? Sure. But not because of anything that I or any other professor taught them. Modesty, colleagues, modesty.

Clifford Orwin is professor of political science at the University of Toronto and distinguished visiting fellow at Stanford University's Hoover Institution.

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**THE “FIERCEST DEBATE” OVER THE REGULATION OF LEGAL
EDUCATION IN ONTARIO**

**Implications for the Federation of Law Societies of Canada’s Initiative to
Institute Requirements for the Canadian Common Law Degree**

By: Katherine Levitt
Date: February 2, 2010

I. INTRODUCTION

In June 2007 the Federation of Law Societies of Canada (the “federation”) convened a Task Force on the Canadian Common Law Degree (the “task force”) to review the existing academic requirements for entry to bar admission programs across Canada, and to recommend any modifications to such requirements that they saw fit. The task force published their recommendations in a final report published in October 2009. The recommendations include the adoption of national academic requirements for entry to bar admission programs in Canada’s common law jurisdictions, as well as certain institutional requirements that Canadian law schools would be expected to follow.

The focus of this paper will not be to critique and examine the merits of the task force’s final recommendations. Instead, this paper will examine the history of the regulation of legal education by the profession in Ontario, and what the implications of such history are on the profession’s sole authority to regulate the academic curriculum in law schools. What will be revealed in examining this history is that, quite unlike the current process undertaken by the federation’s task force, established standards for law schools in 1957 and 1969 in Ontario were the product of an *agreement* between the legal profession and legal academy. This agreement was arrived at through the use of careful negotiation, healthy debate and compromise, putting an end to decades of antagonism. The agreement would set an important tradition for the relationship between the profession and the legal academy with respect to the regulation of legal education – a tradition that the federation should not have the ability to easily depart from. I begin by presenting a brief overview of the task force’s process and recommendations and the

reaction of the legal academy. I will then offer background to the debate that occurred between the legal profession and the legal academy in the early 20th century, a debate that culminated in a compromise regarding legal education in 1957. In conclusion, I will examine the implications of this debate on the task force's recent initiative, and attempt to answer the question: wherein lies the authority to regulate legal education?

II. BRIEF OVERVIEW OF THE TASK FORCE'S RECOMMENDATIONS

The academic requirements in the task force's final report include what is referred to as "competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education".¹ The *basic skills* require that an applicant demonstrate competencies in problem-solving, legal research, and oral and written communication.² The *ethics and professionalism* requirement calls for a stand alone course dedicated to the subject, that would give the applicant "an awareness and understanding of the ethical requirements for the practice of law in Canada..."³. Finally, and perhaps the most contentious of all, the *core legal knowledge* requirement lists areas of study in which the applicant must be able to demonstrate a general understanding. These different areas of study specified by the task force are categorized under what the task force refers to as Foundations of Law, Public Law of Canada, and Private Law Principles.⁴

¹ Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree, Final Report* (October 2009) at 4.

² *Ibid.* at 8.

³ *Ibid.* at 9.

⁴ *Ibid.* at 10.

The work of the task force has been met with resistance from members of the legal academic community in Canada.⁵ Much of this criticism centres around process, and in particular the inadequate debate and consultation that took place between the task force and a broad base of the legal academy when it devised the list of academic requirements. When the task force issued its consultation paper in September 2008, it offered only 3 months to receive submissions in response. In the end, a total of 37 submissions were received, only 12 of which were from representatives of Canadian law faculties, universities, deans, professors, and students.⁶ Moreover, although the task force says it met with two Canadian law faculties⁷, as important and distinguished as these faculties are, one can hardly say that the task force's findings were the result of a healthy debate between members of the profession and the legal academic community.

Many of the complaints about the inadequate consultation process can be seen in the various responses from members of the legal academy to the task force's consultation paper. The Law Society of Upper Canada (the "law society"), in its response to the consultation paper, remarked that "The Federation Task Force's consultation period has been short".⁸ The University of Calgary Faculty of Law, in its response held that "...more and deeper dialogue is required, that should be based on collaboration rather than the formal and sometimes adversarial process that we have seen".⁹ Dean Brent Cotter, writing on behalf of the University of Saskatchewan College of Law Faculty, recommended that a "national, integrated dialogue occur before any decisions

⁵ Much of this resistance can be found in the submissions to the Task Force's consultation paper.

⁶ *Supra* note 1 at Appendix 1.

⁷ In its final report the Task Force claims to have met with members of the law faculties at the University of Toronto Faculty of Law, and the University of Ottawa Faculty of Law, to further discuss its September 2008 consultation paper (*Ibid.*).

⁸ Law Society of Upper Canada, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (November 2008) at 3.

⁹ University of Calgary Faculty of Law, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (undated) at 1.

are taken by the Federation...”.¹⁰ Dean Bruce Feldthusen from the University of Ottawa Faculty of Law, writing in his personal capacity, remarked how “there is a difference between being involved in planning an initiative, and being allowed to comment on an initiative that is already well underway”.¹¹ Perhaps one of the most notable responses came from the Canadian Association of Law Teachers and the Canadian Law and Society Association (CALT/CLSA) who together formed a joint committee to respond to the task force’s paper. The CALT/CLSA response was very critical of the fact that “legal educators, via the CALT and/or CLSA, were never invited to participate in the preliminary process before the Consultation Paper was published and circulated for the purposes of consultation”.¹²

In addition to process, another criticism has been the lack of evidence-based reasoning used by the task force to arrive at its recommendations. As Harry Arthurs, a well-known Canadian expert on legal education, remarked in his response to the task force’s consultation paper: “The proposed list of ‘framework competencies’ is deficient because it is based neither on historical or current evidence of what lawyers actually know or do nor on evidence-based speculation about what they will have to know or do in the future...”.¹³ Arthurs goes on to say that:

...in the absence of any hard evidence that current graduates are more poorly trained or more prone to professional misconduct or incompetence than their predecessors, it is difficult to see why a more prescriptive approach should be adopted...At most, suggestions to reduce [academic] autonomy should be evidence-based, and should be directly related to the prevention of harm to the public by inadequately-educated graduates.¹⁴

¹⁰ Dean Brent Cotter on behalf of the University of Saskatchewan College of Law, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (December 15, 2008) at 5.

¹¹ Dean Bruce Feldthusen, University of Ottawa Faculty of Law, writing in his personal capacity, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (December 1, 2008) at 2.

¹² CALT/CLSA, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (December 15, 2008) at 12.

¹³ Harry Arthurs, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (undated) at 3.

¹⁴ *Ibid.* at 10-11.

The last time a major dispute arose between the legal profession and academics over the management and control of legal education was in the early 20th century in Ontario. This debate culminated in a 1957 *agreement* between the two groups about what the academic requirements should be for an approved law course (i.e. what academic standards universities should meet in order to open an approved law school that granted an LL.B.). The academic standards would later be revised in 1969. Ontario's history on the subject of legal education is so important because these standards would eventually become the guiding criteria for all Canadian approved law schools.

III. THE 'FIERCEST' DEBATE OVER LEGAL EDUCATION IN ONTARIO IN THE EARLY TO MID 20TH CENTURY

The current tensions between the legal profession and the legal academic community surrounding the issue of control over legal education harkens back to the early 20th century dispute in Ontario between the benchers of the Law Society of Upper Canada and those who, led by Cecil A. Wright, wanted more emphasis placed on academic training in legal education. This time of upheaval is what Bora Laskin would later refer to as “the fiercest debate on legal education that Canada has hitherto known”.¹⁵

Wright, who was dean of Osgoode Hall Law School and would later establish a competing law school at the University of Toronto, is widely viewed as “the architect of legal education in Ontario”.¹⁶ The debate about legal education in Ontario pitted those in favour of an emphasis on practical training against those who wanted a more academic, university-based approach. C. Ian

¹⁵ Bora Laskin, *The British Tradition in Canadian Law* (London: Stevens and Sons, 1969) at 84.

¹⁶ C. Ian Kyer & Jerome E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957* (Toronto: The Osgoode Society, 1987) at 4.

Kyer and Jerome E. Bickenbach, authors of *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957* eloquently frame the debate as follows:

The benchers of the Law Society of Upper Canada staunchly upheld the principles that legal education must be practical in order to prepare the lawyer to serve society, and that the educational process should be controlled by those who practiced the profession. In contrast, Wright and his teaching colleagues stressed the ‘learned’ nature of the profession and the need for the educational process to be developed and controlled by professional educators.¹⁷

i. Early History

Before delving into the nature of the fiercest debate, some early history is important. The Law Society of Upper Canada was founded in 1797 by an Act of the Legislative Assembly of Upper Canada.¹⁸ The 1797 *Law Society Act* empowered the profession to “control entry to its ranks, define its standards, and police its monopoly of practice”.¹⁹ The first students of law were recorded by the law society in 1801.²⁰ Training of these students focused exclusively on practical training:

Students of the law were not required to pass examinations either before entering articles or before being admitted to the society with full privileges to practise law. The student’s master, or principal, was solely responsible for his education and, after five years, his acceptability.²¹

Eventually articling alone was seen as insufficient training, and law students began to demand lectures.²² In response to these demands, in 1843 the law society arranged for the appointment of William H. Blake as the first professor of law at the newly opened University of King’s College

¹⁷ *Ibid.* at 5.

¹⁸ Law Society of Upper Canada website: *History, The Oldest and Largest of Canadian Law Societies* <<http://www.lsuc.on.ca/about/a/history/>>.

¹⁹ Christopher Moore, *The Law Society of Upper Canada And Ontario’s Lawyers 1797–1997* (Toronto: University of Toronto Press, 1997) at 9.

²⁰ *Supra* note 16 at 24.

²¹ *Ibid.*

²² *Ibid.* at 25.

(which would, by 1850, become part of the University of Toronto).²³ Tensions began to emerge between the law society and the university: in the early 1850s the law society began to “[discourage] students from attending what it saw as increasingly ‘academic’ lectures” and the university “responded by abolishing the chair in 1853”.²⁴ Eventually lectures would be restored through Trinity College, and in 1855 the law society arranged for Osgoode Hall (built by the law society in 1832) to deliver lectures.²⁵

Even in these early days tensions began to emerge between the profession and academy over questions of the content and control of legal education:

Although the law society was reluctant to invest its own funds in educational ventures...it feared losing control over the education of its students and therefore was unwilling to allow any of the province’s universities to take over the role. Still, law students clearly felt the need for some type of formal training, and the profession itself worried that articles alone might not afford a guarantee of fitness to practise.²⁶

Over the next 30 years (1855 – 1888) attempts would continue to be made to formalize legal education in Ontario. This period was marked by the opening and then subsequent closing of a school of law at Osgoode Hall over two times. In 1888 the law society convened a Committee on the Establishment and Maintenance of a Law Faculty, in response to a proposal put forward by the University of Toronto to establish a faculty of law that would be jointly run by both the university and the law society.²⁷ The committee recommended against such a partnership. It did, however, recommend improvements to the school of law at Osgoode Hall in the form of compulsory lectures and the hiring of a permanent teaching staff that was closely monitored by

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.* at 25-26.

²⁷ *Ibid.* at 29.

the law society's Legal Education Committee.²⁸ In 1889 the law society tasked the Legal Education Committee with the implementation of these recommendations, thus laying the foundation for the establishment of a permanent law school in Ontario:

The underpinnings of a permanent law school were thus secured: the law society, probably to block any further attempt by the University of Toronto to encroach on the field of legal education, was finally in the business of training students for admission to the bar.²⁹

William Albert Reeve was appointed the first principle of the newly minted Osgoode Hall Law School, which officially opened on October 7, 1889.³⁰ Although a principle had been appointed, the law society still maintained a fair degree of control over legal education at the law school: "Reeve was principal of the law school but the legal education committee [of the law society] was its collective dean, determining all significant matters of school discipline, curriculum, and policy".³¹

The law society ensured the program at Osgoode Hall "offered a 'black-letter' law curriculum intended less to encourage free-wheeling academic inquiry than to bring new generations of law students into the established tradition".³² John D. Falconbridge, who would become dean of Osgoode Hall Law School in 1923, explained clearly the early system of legal education at the school, in a 1932 article that appeared in the English *Journal of the Society of Public Teachers of Law*. His description illustrates how the school's program was not intended to conflict with articling:

At Osgoode Hall, unlike some of the other Canadian law schools, the system in actual use is one of concurrent law school training and office service. The law school lectures are given on Monday, Tuesday, Thursday and Friday at 9am and 10am, and on Wednesday at 9am, 10am and

²⁸ *Ibid.* at 30; *Supra* note 19 at 170.

²⁹ *Supra* note 16 at 29.

³⁰ *Ibid.* at 30-31.

³¹ *Supra* note 19 at 170.

³² *Ibid.*

11 am, and for the rest of the day a student is, nominally at least, engaged in office work under the direction of the solicitor to whom he is articled or the Toronto agent of that solicitor. Every student must be articled to a solicitor. If a person is not a university graduate when he is admitted as a student on the books of the Law Society, the term of the articles is five years, during the last three of which he attends the law school. If he is a graduate, the term of the articles is three years running concurrently with the three years of his attendance at the law school.³³

After Reeve's death in 1894, Newman Hoyles took over as principal, and he would serve in that post until 1923.³⁴ Hoyles "expressed no wish to reform the Osgoode curriculum".³⁵ As such during his tenure there was little change to the system of legal education in Ontario.

ii. Voices for Change

In 1923 two events took place that would usher an era of change: Cecil A. Wright enrolled at Osgoode Hall as a student (after completing an undergraduate honours degree in history and economics at the University of Western), and John D. Falconbridge was appointed as Hoyles's successor. Falconbridge would eventually be given the title 'dean' of the law school.³⁶ Both Falconbridge and Wright wanted reform to the current system of legal education.

Falconbridge would work closely with a special committee created by the law society to look into matters pertaining to the law school generally.³⁷ After a trip to the University of Michigan Law School to "learn firsthand what he could of educational developments in the United

³³ John D. Falconbridge, "Legal Education in Canada" (1932) 1932 J. Soc'y Pub. Tchrs. L. 32 at 38.

³⁴ *Supra* note 19 at 170-171.

³⁵ *Ibid.* at 171.

³⁶ *Ibid.* at 213.

³⁷ *Supra* note 16 at 45.

States”³⁸, Falconbridge worked with the special committee, and according to Kyer and Bickenbach, had quite an impact on the committee’s report:

The report hinted at a change in attitude on the part of the benchers, a turning away from the stagnation of Hoyles’s years to a new and more vigorous school under Falconbridge. It appears that the committee granted all of Falconbridge’s requests. New courses in the history of English law, agency, bankruptcy, and company law were added to the curriculum, and other courses were consolidated. The number of lecture hours increased to 762 per school year...promises were made to expand the student library; and the legal education committee was advised to develop closer relations with the teaching staff.³⁹

Although this marked somewhat of a turning point for the proponents of a more academic focus for legal education, decisions about the curriculum were still to be approved by the law society’s Legal Education Committee. Falconbridge’s push for reform continued, however, as he – together with the Committee on Legal Education of the Canadian Bar Association – successfully helped to convince the law society to raise admission standards to the completion of two years of university in 1927.⁴⁰

After spending a year doing graduate work at Harvard, Wright was hired by Falconbridge as the law school’s fourth full-time faculty member. In a lecture delivered to The Law Club of Toronto University in 1931, Wright made his views known about the shortcomings of the system of legal education at the time:

It has been said that ‘Taught law is tough law.’ Law however cannot, like mathematics or the sciences be taught dogmatically. There are no essential verities. Law can never stand still long enough to allow them to be extracted. What is law to-day is not necessarily law to-morrow. Hence law, like the movements of the earth itself can only be observed in operation. Let us then at the same time observe and consider the changing conditions of society which furnish the path that law must follow and to which it must adjust itself. Only by so doing will we in any degree be able to prophesy where law is tending.⁴¹

³⁸ *Ibid.*

³⁹ *Ibid.* at 45-46.

⁴⁰ *Supra* note 33 at 33; *Supra* note 16 at 56.

⁴¹ Cecil A. Wright, “An Extra-Legal Approach to Law” (Lecture, delivered to The Law Club of Toronto University, 1931), (1932) 10(1) *Can. Bar Rev.* 1 at 17.

As Kyer and Bickenbach note, Wright's criticisms in this lecture of the law society's approach to legal education in Ontario were clear: without an academic component to legal education, lawyers would be unable to understand how the law can be improved:

...by viewing law as a list of rules and doctrines, lawyers were not only behind the times but were making it impossible for the law to solve the real problems that demanded real solutions. The consequences for legal education were clear: law could not be taught in the manner the benchers insisted it should be, as a collection of skills and rules that had to be learned by rote and applied precisely to practices.⁴²

iii. Resistance from the Law Society: 1935 Report of the Special Committee on Legal Education and its Aftermath

In May 1932 the Legal Education Committee reduced the requirements for admission standards, reversing Falconbridge's achievements of 1927. The new rule, which was to come into effect on September 1, 1932, permitted "candidates to enter on their legal training on proof of having passed certain examinations of the Middle School (Pass Matriculation) and of the Upper School (Honour Matriculation) of the Department of Education of Ontario".⁴³ In short, the requirement that law students acquire 2 years of university education prior to entering Osgoode Hall Law School, which had been in place since 1927, was abolished.

After being flooded by complaints from students and local bar associations opposing the reduction of admission requirements, the law society convened a special committee of the Legal Education Committee to "to investigate the subject of Legal Education in all its aspects, and report their conclusions and recommendations".⁴⁴ A 'Special Committee of the Students of

⁴² *Supra* note 16 at 109.

⁴³ *Supra* note 33 at 33.

⁴⁴ Law Society of Upper Canada, "Legal Education" (1935) 13(6) *Can. Bar Rev.* 347 at 347.

Osgoode Hall' was convened in order to prepare a response to the special committee's request for the student body's views on the present state of legal education.⁴⁵

The report made it clear that the students were more in line with the thinking of Falconbridge and Wright. The committee of students recommended going beyond the requirements of 1927, and favoured the attainment of a full university degree be required before permission to study law.⁴⁶ The report was also very critical of what it referred to as "concurrent law school and office work" calling it "a complete failure".⁴⁷ The report suggested that one of the reasons the concurrent system does not work is that it creates conflicting demands for law students.⁴⁸ In the end, the report recommended that students attend the law school full time for three years, followed by one year in a law office⁴⁹:

The root of the evil lies in the present system of concurrent law school and office work, and it is only by abolishing that system and establishing a full-time law school in which the students will have an opportunity to pursue their studies, free from the distraction of competing interests, that Osgoode Hall can completely fulfil its function in our system of legal education.⁵⁰

A final issue dealt with by the report had to do with courses and hours of lectures. The report was very critical of the status quo, claiming that "lectures are conducted, generally speaking, in a very elementary manner, and students are not trained to think for themselves".⁵¹ As Kyer and Bickenbach point out, behind many of the criticisms found in the students' report "was a more

⁴⁵ Report of the Special Committee of Students of Osgoode Hall, "Education for the Bar" (1935) 12(3) Can. Bar Rev. 144 at 144.

⁴⁶ *Ibid.* at 147.

⁴⁷ *Ibid.* at 155.

⁴⁸ *Ibid.* at 153.

⁴⁹ *Ibid.* at 155.

⁵⁰ *Ibid.* at 160.

⁵¹ *Ibid.* at 157.

basic premise, never expressly stated but clearly implied: the law society should not be allowed to control legal education in Ontario”.⁵²

The special committee of the law society issued its final report in 1935. It would eventually be adopted by the law society. The *Report of the Special Committee of Students of Osgoode Hall*, as well as submissions from others such as dean Falconbridge who voiced his concerns with the present state of legal education, all seemed to fall on deaf ears. The special committee’s 1935 report would, in the words of Kyer and Bickenbach, “bring to an end, and to a considerable extent undo, a decade of Falconbridge’s reforms”.⁵³

The 1935 report called for the status quo in terms of admission requirements, stating it was “unable to recommend either the two year college course or a university degree as a necessary condition for admission to the study of law”.⁵⁴ The report also recommended that academic training be scaled back – lectures were to be reduced, as well as the content of certain courses. The special committee’s disdain for academic training, which it believed came at the expense of ‘practical’ office work, was made clear in the report:

...the tendency has been to emphasize unduly the academic training at the expense of efficient office training . We think a change in this respect is desirable, and that greater facilities should be provided for work in the office...[the committee] is of opinion that a rearrangement of the curriculum and a change in hours of lectures will be of important advantage to the students, having special regard to widening the opportunity for practical training.⁵⁵

⁵² *Supra* note 16 at 128.

⁵³ *Ibid.* at 125.

⁵⁴ *Supra* note 44 at 351.

⁵⁵ *Ibid.* at 353.

The law society, through the work of the special committee in undoing the reforms that Falconbridge and others had worked tirelessly to achieve, was flexing its muscle and exerting power and control over legal education in Ontario.

Throughout the next ten years Wright would publish two important works on legal education: *Legal Reform and the Profession* in 1937⁵⁶, and *Law and the Law Schools* in 1938.⁵⁷ Not surprisingly, both pieces are very critical of the 1935 setbacks to legal education reform. In the 1937 article Wright discussed how the profession's over-emphasis on the 'practical' side of training at the expense of a more academic education stifles legal reform and the development of the law in general:

Not so long ago the governing body of the profession in one of the leading provinces of Canada reported that "the tendency has been to emphasize unduly the academic training at the expense of efficient office training". Let us, by all means, discard the impractical man who attempts to remove law from life and confine it within the four corners of a text-book. But the demand for "practical" training often leads, perversely, to precisely that type...[Unless] our system of legal education is broadened to include searching analyses of existing doctrine... we shall not only continue to turn out a profession unresponsive to legal reform, but we will have made no provision for the building of groups of professional men whose business it is to work for the improvement of the law itself.⁵⁸

In the 1938 article Wright argued that some degree of practical training was valuable when combined with a proper academic education:

Under a system of concurrent office and school work such as we have in Ontario, it is not an easy task to interest students in any aspect of law save that directed towards the quick results so characteristic of our commercial age... I believe that the future of our schools lies in what looks like two opposite directions; in improving the technical branch of our training by some method of supervised and rounded practical work, and with that a teaching of every course with some view of the social purpose that law serves, how it might be improved, how it ought to function.⁵⁹

Wright was arguing that a measure of both practical and academic training were of great value

⁵⁶ Cecil A. Wright, "Legal Reform and the Profession" (1937) 15(8) Can. Bar Rev. 633.

⁵⁷ Cecil A. Wright, "Law and the Law Schools" (1938) 16(8) Can. Bar Rev. 579.

⁵⁸ *Supra* note 56 at 634, 637.

⁵⁹ *Supra* note 57 at 593-594.

and importance in order to have a robust legal system. Until both groups could come together and jointly agree to an arrangement, this balance in legal education would not be realized.

Despite Wright's attempts to revive the debate about legal education in Ontario, the law society did not engage. The debate would not be revived in earnest until 1945. That year, Wright managed to bring together a movement for reform that included "as active participants the president of one of Canada's leading universities [Sidney Smith from the University of Toronto], members of the university's board of governors, and teachers at Osgoode Hall and the university".⁶⁰ Included in this group was Bora Laskin, who moved from teaching at the University of Toronto School of Law School to Osgoode Hall that year.

iv. Cecil A. Wright: Further Attempts at Achieving Legal Education Reform

The members of this movement for reform wanted to create a professional university law school that would combine the University of Toronto School of Law and Osgoode Hall:

The [University of Toronto School of Law] was granting an honours BA [in law] and an LL B, but its students received no credit from the law society and could not practise without graduating from Osgoode Hall; Osgoode Hall qualified students to practise, but could not give a degree. By combining the two schools into a professional university school much could be gained: one could reduce expenses, eliminate duplication, and grant a professional LL. B. degree.⁶¹

In 1948 Wright would replace Falconbridge as dean of Osgoode Hall. Kyer and Bickenback speculate that Falconbridge's resignation during this time could have been an attempt "to put pressure on the benchers to either accept Wright's proposal or declare their opposition openly".⁶²

⁶⁰ *Supra* note 16 at 175.

⁶¹ *Ibid.* at 174.

⁶² *Ibid.* at 193.

A special committee to study Osgoode Hall Law School and legal education in general was convened by the law society, and it was tasked with deciding whether to adopt Wright's proposed reforms, or retain the status quo. Once again, Wright would be disappointed with the results.

The special committee issued a majority report that was "highly critical of Wright and his supporters. [The report] was more a profession of faith in the existing system than an objective appraisal of the facts gathered by the committee".⁶³ Although two other minority reports were issued expressing dissenting views that were more sympathetic to Wright and his movement for reform, it was the majority report espousing more or less the status quo that would be adopted by the law society on January 20, 1949.⁶⁴

After learning of the law society's adoption of the report the next morning from a newspaper report⁶⁵, Wright immediately drafted a letter of resignation and held a press conference announcing his resignation, as well as the resignation of Osgoode Hall professors Stanley Edwards, John Willis, and Bora Laskin. Wright's letter of resignation criticized the law society for not informing him directly about the decisions taken:

In view of the fact that I am charged with the administration of the Law School, it seems to me that it would have been only an act of common courtesy to inform me of such a startling departure from all my recommendations to the Benchers before publishing them in the press. The fact that I was not informed, and the tenor of the recommendations lead me to the conclusion that my resignation as Dean must have been contemplated as a possibility by those persons drafting the report.⁶⁶

⁶³ *Ibid.* at 202.

⁶⁴ *Ibid.* at 207.

⁶⁵ Cecil A. Wright, "Should the Profession Control Legal Education?" (1950) 3(1) *Journal of Legal Education* 1 at 22.

⁶⁶ *Ibid.* at 22-26.

In the forthcoming days the law society would be publicly embarrassed in the newspapers. It would also be faced with the problem that “public opinion seemed to favour Wright’s position”.⁶⁷ Wright’s severance from Osgoode Hall was made final in March 1949, when Wright, together with Laskin and Willis, joined the faculty of law at the University of Toronto. Wright would take the post of dean.⁶⁸

Wright continued to produce important publications on the topic of legal education. In 1950 he wrote *Should the Profession Control Legal Education?* which was published in the *American Journal of Legal Education*.⁶⁹ The article offers an excellent account of the development of legal education in Ontario, and the events that led to Wright’s resignation from Osgoode Hall. Wright, unsurprisingly, is very critical of Ontario’s approach to the regulation of legal education by the profession. Although he states that the *Law Society Act* gives the law society “the widest possible control in the administration of every branch of the profession, including control and supervision of legal education itself”,⁷⁰ Wright nevertheless faults the law society for not granting recognition to the University of Toronto School of Law graduates:

The program and staff at the [University of Toronto School of Law] is the equal of any to be found in Canada. Under these circumstances, the present situation in which the Law Society, by virtue of its statutory powers, attempts to maintain an unfair advantage for its one school must still be resolved either by negotiation or legislation.⁷¹

Wright was laying the groundwork for the next major push for reform: to get the law society to qualify University of Toronto School of Law graduates to practise law in Ontario.

⁶⁷ *Supra* note 16 at 212.

⁶⁸ *Supra* note 19 at 231.

⁶⁹ *Supra* note 65.

⁷⁰ *Ibid.* at 7.

⁷¹ *Ibid.* at 32.

v. The 1957 Compromise: Recognition of Professional University Law Schools

After a few failed attempts on the part of the University of Toronto School of Law to achieve recognition equal to Osgoode Hall, the law society seemed to change its tune entirely on the issue in 1955. Faced with rising enrolment numbers, the school convened yet another special committee to consider the addition of new facilities to accommodate the ever-increasing student body.⁷² The committee soon realized that “planning for the future of Osgoode Hall Law School involved a determination of the school’s role in legal education in Ontario”⁷³, so it expanded its mandate to consider matters relating to the future of the law school in general.⁷⁴ Cost implications for the law society associated with expansion of the law school were also a driving factor for compromise with the universities. The committee articulated the problems associated with planning for future expansion without first settling the question on the role of universities in the report of a meeting held March 4, 1955:

The question of how extensive will be the accommodation required by the Law School in the somewhat more distant future, say ten years, cannot be answered until something is known of the role that Osgoode Hall will play in legal education in future in Ontario. Whether or not this Society should continue to assume the increasingly costly bulk of responsibility for legal education should be settled [emphasis added].⁷⁵

With the approval of the law society, the committee decided to convene a meeting with representatives from Ontario’s universities.⁷⁶ Wright was not present at the meeting. The meeting, however, was attended by Dr. Sidney Smith, President of the University of Toronto and

⁷² *Supra* note 19 at 257.

⁷³ *Supra* note 16 at 249.

⁷⁴ *Supra* note 19 at 257.

⁷⁵ Law Society of Upper Canada, *Report of the Special Committee on Law School* (February 14, 1957) at 3.

⁷⁶ The special committee met with the following representatives from Ontario’s universities: Dr. Sidney Smith (President, University of Toronto), Dr. W.A. Mackintosh (Principal and Vice-Chancellor, Queen’s University), Dr. G.P. Gilmour (President and Vice-Chancellor, McMaster University), Dr. R.A. Allen (Vice-President and Dean of Graduate Studies, University of Western Ontario), Father Rene Lavigne (Dean of the University of Ottawa), Father E.C. Lebel (President and Vice-Chancellor, Assumption College), Father G.E. Cousineau (Rector of St. Patrick’s College) and Dr. M.M. MacOdrum (President of Carleton College). (*Ibid.* at 3).

a close ally of Wright in his push for reforms. A meeting was held on April 30, 1955, to explore “the possibility of the universities of Ontario assuming a greater share of the burden of legal education”.⁷⁷ In the final report of the committee, which was published February 14, 1957, C.F.H. Carson, the committee’s chair, further articulated the purpose of the April 30, 1955 meeting as follows:

Such a meeting would provide an opportunity for an exchange of information, for a general discussion of legal education and in particular for a discussion of a question that was giving many concern namely, whether the time required between senior matriculation and call to the Bar could be shortened, or in any way better allocated.⁷⁸

At the end of the meeting Carson called on the university representatives to “...discuss among themselves the issues raised at the meeting”, and asked that they “formulate a proposal for consideration at a future meeting with [the] committee”.⁷⁹

In December 1955 the committee received a letter from Dr. W.A. Mackintosh, Principal and Vice-Chancellor of Queen’s University, outlining the general areas of agreement among the university representatives concerning legal education, and a proposed role for the universities.⁸⁰

Wright had taken part in these discussions.⁸¹ Key excerpts of the letter, as well as the recommendations, can be found below:

...There is complete agreement among us on the interest of the universities in having some share in legal education...A number of the universities are seriously interested in the possibility of establishing university law schools on the assumption that in the next decade there will be need for much extended facilities for law students...

The bases on which such schools might be established, with the cooperation of the Law Society, are considered to include:

(a) A B.A. or equivalent degree as a minimum entrance qualification.

⁷⁷ *Supra* note 75 at 3.

⁷⁸ *Ibid.* at 3.

⁷⁹ *Supra* note 16 at 250.

⁸⁰ *Supra* note 75 at 3.

⁸¹ *Supra* note 16 at 250-251.

- (b) A three-year course in law, presumably leading to an LL.B. degree, in which the minimum prescriptions for core subjects would be agreed with the Law Society but the University Senates would be left latitude to develop specialties and variations adapted to their own staffs and opportunities.
- (c) Such time spent by the student under articles as a law clerk, whether or not in attendance at Osgoode Hall, as the Law Society may require.
- (d) Such emanations for admission to the Bar as may be prescribed by the Law Society but which desirably might follow the pattern of the Royal College of Physicians and Surgeons in not duplicating university and Bar examinations.
- (e) Such substantial parity of treatment for all students as will make it possible for them to qualify for the Bar in the same length of time whether they have processed through Osgoode Hall or through a university law school.⁸²

The special committee reviewed the letter and recommendations, and suggested that a further meeting with representatives from the universities be convened on March 17, 1956.⁸³ At that meeting both sides realized that a misunderstanding existed between them concerning clause (a) of Mackintosh's letter. The university representatives, as it turned out, included this because they were under the impression that "the B.A. or equivalent degree was a stipulation imposed and insisted upon by the Law Society".⁸⁴ In the end it became apparent that the universities were more in favour of "an alternative route to the study of law...consisting of two years university work instead of a B.A. degree. Such two years could consist of a specially devised pre-law course or of successful completion of two years work in an approved Arts course."⁸⁵

The committee seemed determined to find a lasting solution to the dispute about legal education in Ontario that had plagued relations between members of the law society and the legal academy in the preceding decades. This resolve on the part of the committee to come to an agreement and end years of antagonism is evidenced in the language of the committee's 1957 final report:

⁸² *Supra* note 75 at 5-6.

⁸³ *Ibid.* at 6.

⁸⁴ *Ibid.* at 7.

⁸⁵ *Ibid.*

...every possibility raised by [the committee's] deliberations and its discussions with the universities and the Society's full-time staff were examined in detail in the hope that an arrangement of lasting benefit to all concerned, the future law students in Ontario, Osgoode Hall Law School, and the universities might be devised.⁸⁶

Eventually, based on the discussions with the university representatives, the committee developed a plan for the future of legal education in Ontario. Before going directly to the law society with the plan, a small study group composed of a member representing the universities, and two members representing the committee was created to engage in yet further discussions about the committee's plan. The group met on January 18 and 19, 1957, and following the meetings, submitted a jointly agreed-upon plan that was set out in a memorandum to all the universities.⁸⁷

The plan was met with "unqualified approval".⁸⁸ The heads of all the Ontario universities approved the plan "warmly without qualification".⁸⁹ The governing body of the law society would also approve the plan unanimously.⁹⁰ The day that legal education reformers such as Falconbridge and Wright dreamed of had arrived: the universities would undertake to provide the academic training of law by offering an approved law course.⁹¹ The law society and the universities were able to join forces, and through respectful discussion and negotiation, come to a compromise on what would be required for approved law courses. For legal education reformers like Wright, "this was the culmination of decades of effort...It could not be said that [the

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* at 7-8.

⁸⁸ *Ibid.* at 8.

⁸⁹ *Ibid.* at 14.

⁹⁰ *Supra* note 16 at 263.

⁹¹ Law Society of Upper Canada, *Report of the Special Committee on Legal Education* (1972) at 6.

reformers] themselves had triumphed, however; what had triumphed was a spirit of co-operation, compromise, and mutual understanding...the war was over”.⁹²

The days of concurrent practical and academic training were gone. Under the new plan students would obtain formal academic training through an approved law course at a university, where they would obtain a law degree. This would be followed by the Bar Admission Course, which consisted of not more than 15 months of service under articles and a further period of practical and clinical training at Osgoode Hall of not more than 6 months, followed by a set of oral and written exams.⁹³

By the law society’s own admission, this 1957 compromise would be referred to as an “arrangement”.⁹⁴ This arrangement largely reflected the recommendations of the university representatives, as described in Mackintosh’s December 1955 letter to the committee. On April 3, 1957, the chairman of the law society’s Legal Education Committee, D. Park Jamieson, wrote a letter summarizing the 1957 requirements for an approved law course – the plan the universities had agreed to earlier that year:

1. An approved law course must have as minimum requirements for admission:
 - a. Successful completion of 2 years approved course in an approved university after senior matriculation, or
 - b. The successful completion of 3 years in an approved course in an approved university after junior matriculation.(Note: A degree in an approved course in an approved university satisfies the minimum requirement).
2. Minimum length of a law school course should be three academic years.
3. Each academic year should consist of an effective teaching period of approximately 30 weeks each of 15 hours per week, for a total of 450 hours each year.
4. Minimum full-time teaching staff of 5 professors.
5. Minimum law library of 10,000 volumes,

⁹² *Supra* note 16 at 262.

⁹³ *Supra* note 75 at 9.

⁹⁴ *Supra* note 91 at 6.

6. Curriculum. The following principles were enunciated:
- a. A law school course should contain certain basic subjects which would be compulsory for all students in all law schools.
 - b. Additional subjects to complete the regular course should be at the discretion of each law school
 - c. It is also recognized that some law schools desire to specialize in a particular field.
 - d. An approved school shall offer the following subjects to all its students:
 - Legal History
 - Contracts
 - Torts
 - Real Property
 - Personal Property
 - Civil Procedure
 - Criminal Law and Procedure
 - Agency
 - Partnership
 - Company Law
 - Constitutional Law
 - Evidence
 - Banking and Bills of Exchange
 - Family Law
 - Sale of Goods
 - Equity
 - Real Estate Transactions
 - Trusts
 - Wills and Administration of Estates
 - Municipal Law
 - Taxation
 - Legislation and Administrative Law
 - Jurisprudence or one subject of a jurisprudential nature.⁹⁵

The letter also included the following important paragraphs, which helped explain further the curriculum requirements:

It is appreciated that different subject matters may be variously grouped at different institutions, for example, Real Property and Personal Property may be combined to form one course in Property and for that reason this list should be regarded as indicating *areas* of the law which must be provided for in any curriculum before approval will be given and the list should not be regarded as necessarily establishing separate courses that must be taught under those labels in each institution.

It is prescribed that the courses in Contracts, Torts, Real Property, Personal Property and Criminal Law and Procedure be offered in the first year to ensure the laying of a sure foundation for the law course. There is no prescription concerning the sequence in which the remainder of the courses will be taught.⁹⁶

⁹⁵ *Supra* note 91 at Appendix D, pg 59-60.

⁹⁶ *Ibid.* at 60.

Throughout the 1950s and 1960s a series of approved law schools would open their doors in Ontario. In 1957 Osgoode Hall Law School, University of Toronto, Queen's University and the University of Ottawa all became officially 'approved' to teach the LL.B. programme, in accordance with the terms of the 1957 arrangement. The University of Western Ontario followed suit in 1958, and finally the University of Windsor in 1968.⁹⁷

This understanding that was arrived at between the law society and the universities in Ontario had an impact on the rest of Canada. As Kenneth Jarvis, former secretary of the law society noted in a 1984 letter to the federation regarding the approved Canadian LL.B. degree:

It is clear from the reports of 1957 that the original intention was simply to reshape legal education for Ontario. It soon became obvious, however, that universities in other parts of Canada expected that some of their graduates would want to be able to qualify to practise in Ontario. Also they approved of the direction in which Ontario was moving and were ready to move in the same direction themselves. Accordingly, the Law Society of Upper Canada made it clear that any university law faculty in Canada that was prepared to follow the format which had been adopted in Ontario could be approved for the purpose of having its graduates enter the Bar Admission Course in Ontario... There are at present sixteen universities across Canada which confer the approved LL.B. degree.⁹⁸

vi. 1969 Modifications to the 1957 Curriculum Requirements

In 1969 the Committee of Ontario Law Deans requested that the law society modify some of the requirements for the approved law school course.⁹⁹ After consultations and careful consideration of the proposed modifications, they were approved, and passed by the law society in March 1969. Members of the Legal Education Committee and the leadership of the law society "sought

⁹⁷ Letter from Kenneth Jarvis, Secretary, Law Society of Upper Canada to the Federation of Law Societies of Canada re. "Approved Canadian LL.B. Degrees" (February 20, 1984) (*Supra* note 1 at Appendix 2, pg. 823).

⁹⁸ *Ibid.* at Appendix 2, pg 823-824.

⁹⁹ *Supra* note 91 at Appendix D, pg 61.

it desirable to introduce a greater measure of flexibility into the stipulated requirements”.¹⁰⁰

These changes would reduce the 1957 list of compulsory courses from 23 to 7, giving “the law schools much greater freedom in curriculum development, but they did not affect the basic structure or the length of the program of legal education in the province.”¹⁰¹

The following are the changes made to the 1957 arrangement:

- (a) That the Law Schools should continue to offer major courses in the twenty-three subject areas listed in 1957, plus Labour Law and Conflict of Laws (probably omitted through clerical error in 1957)
- (b) The undertaking in sub-section (a) above is subject to the following understandings,
 - (1) The different subject areas may be variously combined or subdivided at different law schools, hence the list should be regarded as indicating areas of the law in which instruction will be regularly offered. The list should not be regarded as necessarily establishing courses that must be taught separately or in combination under these specific labels.
 - (2) Every student shall be required to take the major basic class offered in each of the following subject areas.
 - Civil Procedure
 - Constitutional Law of Canada
 - Contracts
 - Criminal Law and Procedure
 - Personal Property
 - Real Property
 - Torts
 - (3) Subject to paragraph (2), the academic planning authority of each University Faculty of Law may provide any or all courses to its students on a required or an optional basis; may require students to elect between alternative courses or groups of courses to attain either diversification or specialisation to an extent deemed desirable and may add courses to its curriculum on a required or an optional basis in subject areas other than those listed in subsection (a),
 - (4) The academic planning authority of each University Faculty of Law may determine the sequence in which courses are taught,
 - (5) The academic year shall extend for approximately thirty effective teaching weeks exclusive of examination periods. Each student shall be under instruction or supervision of the teaching staff for approximately fifteen hours per week in class sessions, seminars tutorial and legal writing or research projects,
 - (6) The academic planning authority of each University Faculty of Law may determine the hours allotted to the various courses offered.¹⁰²

¹⁰⁰ Letter from Kenneth Jarvis, Secretary, Law Society of Upper Canada to Thomas Feeney, Dean Faculty of Law, University of Ottawa (April 15, 1969) (*Supra* note 1 at Appendix 3, pg. 1).

¹⁰¹ *Supra* note 91 at 6 .

¹⁰² *Supra* note 91 at Appendix D, pgs 61-62.

The 1969 changes show a distinct change in tone from the law society that Wright fought with throughout the early part of the 20th century. In this document we see a profession that is in favour of greater freedom for the ‘academic planning authority’ of each university faculty of law to set their own curriculum (subject to the basic class requirements in paragraph 2). Thus the 1969 amendments represented an even further shift away from the law society’s maintenance of unfettered control over the regulation of legal education in Ontario. Deference was being shown to the autonomy of the legal academic community in an unprecedented manner.

IV. IMPLICATIONS OF THE FIERCEST DEBATE: WHEREIN LIES THE AUTHORITY TO REGULATE LEGAL EDUCATION?

In its submission to the federation, the law society stated that: “The Law Society has the responsibility for admission of lawyers to the bar and it has authority to articulate required competencies for those seeking to be licensed. The 1957/1969 document is evidence of this authority”.¹⁰³ This last statement invites the question about the meaning of the term ‘authority’. The *Law Society Act* does authorize the law society to license Ontario’s lawyers. This is clearly the sense of authority as administrative control. With respect, however, I disagree with the implication of the statement that the 1957/69 documents are ‘evidence’ of the law society’s authority over the law school curriculum itself. Instead, these documents represent an acknowledgement by the profession that the authority over the legal curriculum – authority in the sense of specialized knowledge of the law and legal education – rests with the legal academy.

¹⁰³ *Supra* note 8 at 3.

The 1957 compromise marked the “surrender of [the law society’s] monopoly over legal education” to the universities.¹⁰⁴ With the 1957 process, the law society’s sole control and authority over legal education gave way to a system of cooperation and compromise. Every aspect of the “understandings” of 1957 and 1969 were carefully crafted and negotiated. The law society sought agreement with the legal academy – they were no longer exerting unfettered control, a process which had failed to achieve any kind of constructive solutions in the past. The law society’s own website acknowledges the significance of the 1957 changes to the way the society controlled legal education: “Until 1957, the Law Society controlled entry to the Ontario legal profession through its exclusive jurisdiction over legal education [emphasis added]”.¹⁰⁵ In short, with the creation of the university-based law schools in the mid 20th century, the law society was in effect handing the reigns of authority over the academic curriculum to the legal academy.

Turning back to the *Law Society Act*, it should be acknowledged that the *Act* does explicitly give the law society the ability to regulate Ontario lawyers’ standards of learning, conduct and competence. 4.1(a) of the *Act* states that:

- 4.1 It is a function of the Society to ensure that,
- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide;

It is not explicit that “standards of learning” are synonymous with the “law school curriculum”.

Nowhere in the *Act* does it clearly state that the law society has the power to regulate the curriculum at Canadian law schools. Only sections 60 and 62(23) of the *Act* mention legal

¹⁰⁴ *Supra* note 16 at 263.

¹⁰⁵ Law Society of Upper Canada website: *History, The Law Society and legal education* <<http://www.lsuc.on.ca/about/a/history/>>.

education (other than continuing legal education), and even then it does not refer to the law school curriculum:

60. (1) The Society may operate programs of pre-licensing education or training and programs of continuing legal education.
 - (2) The Society may grant degrees in law.
62. Convocation may make by-laws,
23. respecting legal education, including programs of pre-licensing education or training;

It is also not clear whether the Federation of Law Societies of Canada – the body that has tasked itself with reviewing the Canadian common law degree – has any jurisdiction over the matter.

The federation, which is not governed by a founding piece of legislation, refers to itself as the “national coordinating body of Canada’s 14 law societies”.¹⁰⁶ In addition to sponsoring continuing legal education programs, the federation’s main role is to assess and certify “the qualifications of individuals with international legal credentials who wish to apply for membership in a Canadian law society” through its National Committee on Accreditation.¹⁰⁷

Without any legislation to turn to, or any history of dealings between the federation and the universities concerning the law school curriculum, it is difficult to determine if this ‘national coordinating body’ has the administrative authority to dictate to universities how the law school curriculum should be structured.

V. CONCLUSION

A history of the regulation of legal education in Ontario reveals that only through a process of careful negotiation and compromise was an agreement able to be reached between the profession

¹⁰⁶ Federation of Law Societies of Canada website. *About Us* <<http://www.flsc.ca/en/about/about.asp>>.

¹⁰⁷ *Ibid.*

and the legal academic community, on matters relating to the management and control of legal education. The current work being undertaken by the Federation of Law Societies of Canada's Task Force on the Canadian Common Law Degree stands in stark contrast to this.

The short time frame that the task force gave for 'consultation' is far from adequate. Moreover, all of the submissions to the task force made by representatives of Canadian law faculties, universities, deans, professors, and students (of which there were only 12) expressed serious reservation – in one way or another – with the work of the task force and their methodology. It would be fair to say that the recommendations in the task force's October 2009 final report do not represent an 'agreement' or an 'understanding' between the profession and the legal academy, in the same way the 1957 and 1969 documents do. The tone of the task force's report does not suggest they even sought agreement with members of the legal academy in the first place. As Dean Feldthusen points out in his submission to the task force:

The first paragraph of the Task Force [Consultation] Paper suggests that for the Task Force, this is an "us and them" exercise. The rest of the paper makes it clear that when the authors of the report disagree with the legal educators, the legal educators lose. Period. Because the authors of the report say so.¹⁰⁸

The task force's proposed changes would mark a "radical departure from the relationship between the law societies and the law schools that has existed for the past half century".¹⁰⁹ Such a change should not be accepted lightly by the legal academy – not only because it is not in keeping with the established relationship and goes against all the achievements of the 'fiercest debate', but questions should be raised about whether the federation – or the law societies in general – still maintain sole authority to dictate to universities the law school curriculum.

¹⁰⁸ *Supra* note 11 at 3.

¹⁰⁹ Queen's University Faculty of Law, *Submission to the Federation of Law Societies of Canada Task Force on the Approved Common Law Degree* (November 3, 2008) at 7.

With the creation of the university-based law schools it is the universities who have the authority to regulate the curriculum of Canadian law schools. Constance Backhouse, in an unpublished article titled *The 'Approved' Common Law Degree*, makes the point that law schools are already strictly regulated by their universities: “Canadian law schools are...regulated by their universities. As with all academic units within university structures, law schools are regularly required to report, to meet stringent standards of peer review, and to achieve measured scholarly and pedagogical results”.¹¹⁰ The regulation of the law school curriculum by the universities does not mean that the 1957 understanding has not been adhered to – and in fact the opposite is true. But the very fact that the law society in 1957 sought ‘agreement’ for the law school curriculum as opposed to unilaterally dictating requirements to the universities is evidence that they were putting an end to their previously held unfettered control over legal education. The federation’s task force is disregarding this important history.

Members of the legal academic community must not be complacent and acquiesce to the task force’s requirements, requirements that, as history reveals, the federation as representatives of the profession do not have the sole authority to impose on law schools, and that stand to threaten the very academic freedom that Wright and other legal education reformers of the early 20th century fought so hard to obtain.

The issue now rests in the hands of the provincial law societies, who may choose to accept or decline the recommendations of the task force. It is my hope that the law societies, when considering this matter, do not forget to take into account the way the fiercest debate was

¹¹⁰ Constance Backhouse, *The “Approved” Common Law Degree* (February 2008) [unpublished] at 3.

resolved. The past is prologue. A measure of both practical training and the law societies' administrative authority to license lawyers, and academic authority that comes from an expert's knowledge of the law in legal education are of great value and importance in order to have a robust legal system. In the absence of this combined sense of 'authority', you are only left with authority in the sense of power. We need to find a constructive way to move beyond a simple power struggle to achieve an outcome that will benefit the legal profession and the society in which law is studied and practiced.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Common Law Degree Implementation Committee

Final Report

August 2011

This report is presented to the Council of the Federation of Law Societies of Canada for consideration. None of the recommendations contained herein is effective unless approved by the Federation and its member law societies.

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INTRODUCTION

The Federation of Law Societies of Canada's Common Law Degree Implementation Committee (the "Committee") is pleased to provide this final report to the Council of the Federation of Law Societies of Canada (the "Federation"). In accordance with its mandate, the Committee has developed a proposal to implement the uniform national requirement (the "national requirement") for entry to law society admission programs¹ in Canadian common law jurisdictions.

The Committee's 20 recommendations develop a coherent implementation structure that is detailed and appropriately balanced in its effect on law schools, the National Committee on Accreditation (the "NCA"), law societies and the body that will determine compliance with the national requirement. The recommendations ensure that the intent of the Federation's Task Force on the Canadian Common Law Degree (the "Task Force") and the manner in which the Task Force's recommendations are to be implemented are clear to:

- law schools that will meet the national requirement and report on their programs annually;
- the compliance body;
- the NCA, which will apply the requirements to applicants seeking Certificates of Qualification;
- law societies; and
- the public.

They reflect the principle underlying the Task Force's recommendations that its report should not interfere with innovation and flexibility in Canadian law school education.

As the Federation and its member law societies implement the national requirement there is a valuable opportunity to strengthen and advance the institutional relationship between law societies and Canadian law schools at a national level. The Committee's process has convinced all its members that such a collaborative national dialogue is both feasible and vital to the interests of furthering law societies and the legal academy's commitment to a legal profession that is learned, competent and dedicated to the public interest.

¹ The term "law society admission program" refers to and includes all the pre-licensing processes, however named, of law societies in the common law provinces and territories leading to admission to the profession.

RECOMMENDATIONS

Recommendation 1

The commentary set out in **TABLE A** regarding the competency requirements be approved.

Recommendation 2

The elaboration of the professionalism and ethics competency set out in **TABLE B** be approved.

Recommendation 3

“Course” relating to ethics and professionalism instruction be interpreted to allow for both:

- a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies set out at **TABLE B**, and
- a demonstrable course of study devoted to ethics and professionalism that could be delivered:
 - (1) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies set out in **TABLE B**; and/or
 - (2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies set out in **TABLE B**.

Recommendation 4

By 2015, graduates seeking entry to law society admission programs be required to have taken a demonstrable course of study dedicated to ethics and professionalism that is a minimum of 24 hours, is formally assessed and, at a minimum, addresses the required competences set out in **TABLE B**.

Recommendation 5

The commentary and direction set out in **TABLE C** regarding the approved common law degree academic program requirements be approved.

Recommendation 6

The commentary and direction set out in **TABLE D** regarding the approved common law degree required learning resources be approved.

Recommendation 7

Law schools be entitled to comply with the national requirement by using the Program Approval Model or the Individual Student Approval Model for a given program, including joint degree programs.

Recommendation 8

A graduate from a school applying the Individual Student Approval Model to a given program be eligible for entry to law society admission programs if he or she provides an official transcript from the degree granting institution certifying that he or she has met the national requirement for entry to law society admission programs.

Recommendation 9

A graduate who has not met the national requirement who subsequently seeks entry to a law society admission program be required to obtain first a Certificate of Qualification from the NCA.

Recommendation 10

The Federation website identify whether schools apply the Program Approval Model or the Individual Student Approval Model to a given program.

Recommendation 11

The Canadian Common Law Program Approval Committee (the "Approval Committee") be authorized to make any changes, revisions or additions to the standardized annual report form set out in **Appendix 3** as it determines necessary, provided the changes, revisions or additions conform to the national requirement and reflect the purposes as described in this report.

Recommendation 12

The compliance process set out in **TABLE E** be approved.

Recommendation 13

The Approval Committee be authorized to make any changes, revisions or additions to the draft reporting timeline set out in **Appendix 4** and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.

Recommendation 14

Beginning in 2015 and annually thereafter the Approval Committee's final reports be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.

To reflect that the national requirement does not come into effect until 2015, the progress reports in 2012, 2013 and 2014 not be public.

Recommendation 15

The Federation establish a new committee to be called the Canadian Common Law Program Approval Committee.

Recommendation 16

The Approval Committee have the following mandate:

- To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.

- To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.
- To make any changes, revisions or additions to the draft reporting timeline set out in **Appendix 4** and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.
- To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.
- To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.
- To ensure appropriate training for its members.
- To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.

Recommendation 17

The Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process, the first to be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting timeline and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the timeline. Nothing in this recommendation should preclude adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate in Recommendation 16. It should be open to the Approval Committee to recommend the timing of the evaluations.

Recommendation 18

The qualifications to be represented among the members of the Approval Committee set out in **TABLE F** be approved.

Recommendation 19

The appointment process, size, member composition and term of service for the Approval Committee set out in **TABLE G** be approved.

Recommendation 20

The Approval Committee be resourced forthwith and with sufficient professional and support staff and financial resources to enable it to fulfil its mandate. Law societies, through the Federation, fund the Approval Committee.

THE REPORT

BACKGROUND

The Federation's Task Force on the Canadian Common Law Degree (the "Task Force") issued its final report in October 2009. That Report recommends that law societies in common law jurisdictions in Canada adopt a uniform national requirement for entry to their admission programs (the "national requirement"). It further recommends that by no later than 2015, and thereafter, all applicants seeking entry to a law society admission program must have met the national requirement. The Task Force report recommends that the National Committee on Accreditation (the "NCA") apply the national requirement in assessing the qualifications of individuals with legal education and experience obtained outside Canada or in civil law degree programs in Canada who wish to be admitted to a law society in a common law jurisdiction. It also recommends that the national requirement be applied in considering applications for the approval of programs of new Canadian law schools.

The national requirement specifies the required competencies that graduates must have attained and the law school academic program and learning resource requirements that law schools must have in place to enable entry of graduates to law society admission programs. It applies to the J.D. or LL.B. programs of existing law schools and to applications for recognition of new common law programs.²

The Task Force report also recommends that the Federation establish a committee to implement its report and recommendations. The Task Force recommendations are set out in **Appendix 1**.³

All law societies in Canada approved the Task Force report and recommendations between December 2009 and March 2010. The Federation's model resolution, which law societies adapted to their individual use, contained a provision that the appointed

² "New common law programs" could include both those that are developed within a university setting and those that are not. "New common law programs" also includes those relating to a yet to be established Canadian law school and proposed new programs in established Canadian schools, including civil law schools proposing to establish common law programs.

³ The Task Force report is available at www.flsc.ca/_documents/Common-Law-Degree-Report-C.pdf.

implementation committee include appropriate representation from Canadian law schools.

In May 2010, a Federation working group reported to Federation Council with recommendations for the composition, mandate and reporting deadline of the Federation's Common Law Degree Implementation Committee (the Committee). Council approved the Working Group report, which is set out at **Appendix 2**. The Working Group report reflects the importance law societies place on including law school representatives on the Committee. It specifies two Law Deans as members. In addition, another member of the Committee is a law professor who is also a former law school Dean.

The members of the Committee are: Tom Conway (Chair), Professor Joost Blom, Dean Philip Bryden, John Champion, John Hunter, Dean Mayo Moran, Don Thompson, and Catherine Walker. The Managing Director of the NCA, Deborah Wolfe, also attended and participated in the meetings, as recommended in the Working Group report. Sophia Sperdakos and Alan Treleaven are staff to the Committee.

The Committee's mandate is

- (a) to determine how compliance with Section C (Approved Canadian Law Degree)⁴ of the recommendations of the Task Force on the Canadian Common Law Degree will be measured. Its mandate may include clarifying or elaborating on the recommendations, where appropriate, to ensure their effective implementation, but will not include altering the substance or purpose of them; and
- (b) to make recommendations as to the establishment of a monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining the Federation of Law Societies of Canada's ("the Federation") relationship with Canadian law schools. The Implementation Committee should consider any role the National Committee on Accreditation might play in that monitoring process.

This report fulfills the Committee's responsibility to present its final report to Federation Council no later than September 2011. In accordance with its mandate, the Committee has made recommendations on implementation and on the establishment of a "compliance body." The report discusses the nature, structure and composition of that body with

⁴ Section C incorporates, by reference, the recommendations in Sections A and B. See Appendix 1.

a formal recommendation (Recommendation 15) that it be established and called the Canadian Common Law Program Approval Committee (the Approval Committee).⁵

Where appropriate, the Committee has clarified or elaborated on the Task Force recommendations to ensure their effective implementation, but has not altered the substance or purpose of them.

The Committee's goal has been to ensure that:

- the intent of the Task Force recommendations and the manner in which they are to be implemented are clear to:
 - o law schools that will meet the national requirement and report on their programs annually,
 - o the Approval Committee,
 - o the NCA, which will apply the requirements to applicants seeking Certificates of Qualification,
 - o law societies, and
 - o the public;
- the implementation structure is clear, effective and appropriately balanced in its effect on law schools, law societies, the NCA and the Approval Committee;
- the implementation approach reflects the principle underlying the Task Force's recommendations that its report should not interfere with innovation and flexibility in law school education; and
- the approach to implementation was developed following consultation with and input from law schools, beyond membership of two Law Deans and a former Law Dean on the Committee.

The Committee has benefited from the invaluable assistance and input of the Council of Canadian Law Deans (the CCLD). The CCLD established a Law Deans' Working Group consisting of Dean Mary Anne Bobinski (Faculty of Law - University of British Columbia), Dean Kim Brooks (Schulich School of Law at Dalhousie) and Dean Lorne Sossin (Osgoode Hall Law School) to provide initial comments on a variety of proposals the Committee developed during the course of its analysis. This allowed for refinement of proposals and

⁵ See Recommendations 15 – 20 and discussion beginning at page 39.

better understanding of the Deans' perspectives. The Committee also provided the CCLD with its proposal respecting the ethics and professionalism course requirement, the draft template for the annual report that Law Deans will complete and a memorandum outlining the Committee's proposals for implementation of the Task Force recommendations. The CCLD invited the Committee Chair to attend its meeting in Windsor, Ontario on May 6, 2011, which he did. The CCLD's input assisted in the refinement of the law school reporting process and annual report.

Because the Task Force's report includes a recommendation that graduates seeking to enter law society admission programs must have completed a course in ethics and professionalism at law school, the Committee invited law schools to provide input on implementation of the recommendation. An Ethics Professors' Working Group (EPWG) consisting of Adam Dodek (Faculty of Law - University of Ottawa), Jocelyn Downie (Schulich School of Law at Dalhousie), Trevor Farrow (Osgoode Hall Law School) and John Law (Faculty of Law - University of Alberta)⁶, met with members of the Committee to provide input and assistance in the development of the recommended approach.

The diversity of perspectives among the members of the Committee, the collaborative approach of its discussions and its external consultations have assisted the development of recommendations that will facilitate the effective implementation of the national requirement. The Committee has every confidence that the productive conversations about legal education that have occurred during this process will continue in the future, in the public interest.

THE COMPETENCIES

The approved Task Force recommendations specify minimum competencies for entry to law society admission programs.⁷ With the exception of the competency respecting "ethics and professionalism," which must be satisfied in "a course dedicated to those subjects and addressing the required competencies," each law school may determine how its students

⁶ The EPWG has acted as a liaison to the larger group of ethics and professionalism professors across the country.

⁷ See Section B of Appendix 1.

satisfy the competency requirements. As the Task Force notes, “this allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives, while at the same time meeting the regulators’ requirements that will allow their graduates to enter law society admission programs.”⁸

The required competencies are part of “an academic and professional legal education that will prepare the student for entry to a law society admission program.” Law schools comply with specified requirements respecting the academic program and learning resources.

The requirements leave significant additional freedom within law school curricula and structure for students to develop their particular interests and for law schools to pursue innovative teaching and research.

In examining the competencies, the Committee’s goal has been:

- to determine whether any of the competencies requires clarification or elaboration to facilitate implementation and compliance; and
- to provide such direction in this regard as is necessary.

While the Committee is satisfied that the competencies are generally clear and do not require clarification, it has identified some instances where clarification or elaboration would be useful not only to law schools whose students must meet them, but also to the NCA, which must assess the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada.

The Committee has also determined a number of instances where examples of how a competency could be satisfied would be useful and has included these. The Committee emphasizes that these are examples only and do not limit or circumscribe a law school’s ability to determine how its students satisfy the competency.

⁸ Task Force Report, p. 31.

For ease of understanding, the Task Force’s competency requirements are set out in **TABLE A**, with the Committee’s recommendations for clarification, elaboration or direction set out in an accompanying box. The ethics and professionalism competency is dealt with separately following the Table.

TABLE A
Competency Requirements

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

- *identify relevant facts;*
- *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*
- *analyze the results of research;*
- *apply the law to the facts; and*
- *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*

No clarification necessary.

1.2 Legal Research

The applicant must have demonstrated the ability to,

- *identify legal issues;*
- *select sources and methods and conduct legal research relevant to Canadian law;*

Given that the skills addressed in this competency relate to legal research, the reference to “Canadian law” should be read in that context. It should not be seen as referring to substantive Canadian law, but rather to the types of legal

research resources that reflect the Canadian context (e.g. precedent-based research). This is relevant to the assessment of the qualifications of individuals with legal education and professional experience obtained outside of Canada or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada and is also applicable to those educated in common law Canadian law schools.

- *use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;*
- *identify, interpret and apply results of research; and*
- *effectively communicate the results of research.*

No clarification necessary.

1.3 *Oral and Written Legal Communication*

The applicant must have demonstrated the ability to,

- *communicate clearly in the English or French language;*
- *identify the purpose of the proposed communication;*
- *use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- *effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.*

No clarification necessary.

2. *Ethics and Professionalism*

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. *the duty to communicate with civility;*
- b. *the ability to identify and address ethical dilemmas in a legal context;*
- c. *familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*

- i. *circumstances that give rise to ethical problems;*
- ii. *the fiduciary nature of the lawyer's relationship with the client;*
- iii. *conflicts of interest;*
- iv. *duties to the administration of justice;*
- v. *duties relating to confidentiality and disclosure;*
- vi. *an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
- vii. *the importance and value of serving and promoting the public interest in the administration of justice.*

Discussed separately below.

3. *Substantive Legal Knowledge*

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge.

The Task Force recommendations specify minimum competencies required for entry to law society admission programs. The Task Force report recognizes that legal education in Canada is an enriched learning environment and agrees that it provides both a liberal legal education and a professional education. In law school students begin to “think like lawyers,” examine law critically and address deficiencies in legal systems and principles. The competencies that are included in the national requirement are therefore situated in this broader context.

This preamble to the section 3 competencies seeks Deans’ descriptions of how their school offers “a sufficiently comprehensive program of study” to enable graduates to “obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge.” Each Dean will be asked to address this in the annual report to the Approval Committee.

In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- *principles of common law and equity;*

This competency could be addressed as part of courses in private law. It is open to schools to address this competency in other ways.

- *the process of statutory construction and analysis; and*

This competency could be addressed by any number of courses that are statute based (e.g. taxation, corporate, administrative, criminal, civil procedure, family, labour, etc.). It is open to schools to address this competency in other ways.

- *the administration of the law in Canada.*

This competency is directed at understanding the organization of the courts and tribunals **in Canada**, including appeal processes.

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

The modifier “core” before “principles” is unnecessary and will not appear on the annual report to the Approval Committee law schools complete.

This section 3.2 requirement is fully addressed by the enumerated competencies below. All competencies under section 3.2 are intended to address public law **in Canada**.

- *the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*

The part of this competency requirement that states “the constitutional law of Canada, including...the rights of Aboriginal peoples of Canada” could be addressed in a number of ways, including, for example, in a constitutional law

course or as part of a property law course that addresses Aboriginal rights. It is open to schools to address this competency in other ways.

- *Canadian criminal law; and*

No clarification necessary.

- *the principles of Canadian administrative law.*

This competency contemplates the principles of **Canadian** administrative law. This competency could be addressed through a stand-alone administrative law course or through a course in which the subject matter is grounded in an administrative tribunal (e.g. labour/employment law, environmental law). It is open to schools to address this competency in other ways.

3.3 *Private Law Principles*

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

The modifier “foundational legal” before “principles” is unnecessary and will not appear on the annual report to the Approval Committee law schools complete.

- *contracts, torts and property law; and*

No clarification necessary.

- *legal and fiduciary concepts in commercial relationships.*

This competency contemplates a conceptual overview of business organizations, including fiduciary relationships in a commercial context. It is open to schools to address this competency through a course in corporate law or in other ways.

Recommendation 1

The commentary set out in TABLE A regarding the competency requirements be approved.

Ethics and Professionalism Competency

The Task Force report places particular emphasis on the need for law school graduates who seek entry to law society admission programs to have an understanding of ethics and professionalism. It notes,

Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures. Increasing evidence of external scrutiny of the profession in this area and internal professional debates about ethical failures point to the need for each lawyer to understand and reflect on the issues. In the Task Force's view, the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better.

The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues. To ensure that law students receive this early, directed exposure the Task Force believes a stand-alone course is essential.⁹

In addition to setting out the components of the ethics and professionalism competency, the Task Force report recommends that this competency be acquired in a course dedicated to the subject and addressing the competencies. This is in contrast to the approach to all the other competencies in the national requirement in which the report recommends that it be left to law schools to determine how their students meet them. As the Task Force indicates, "ethics and professionalism lie at the core of the profession."

The unique approach the Task Force takes to this competency led the Committee to consult, as described above in the 'background' section to this report, to ensure that the Task Force's recommendations respecting ethics and professionalism are implemented as effectively as possible, in keeping with both the spirit and letter of the recommendations.

⁹ Task Force Report, p.35.

The Committee received invaluable input and assistance respecting both the implementation of the stand alone course requirement, which will be discussed later in this report, and on the language of the ethics and professionalism competency, which is discussed here.

In the course of its consultations the following points were drawn to the Committee's attention:

- The way in which the actual competency is stated in the Task Force report is more narrowly focused than the rest of the Task Force report on the topic appears to have intended. This is because the components of the competency, as originally worded, focus mainly on issues addressed in Rules of Professional Conduct, rather than also reflecting the greater Task Force goal that students understand and reflect on broader ethical and professionalism issues.
- Presenting the competencies as a "list" of components could have the unintended effect of freezing curricula at a point in time. Making it clear that the list is not exhaustive would minimize the concern.
- The Task Force's intent to recognize the importance of ethics and professionalism would be more effectively addressed if the implementation approach more accurately reflects that intent.

The Committee agrees with these points. While maintaining all the components of the ethics and professionalism competency set out in the Task Force's report, the Committee has added additional language that reflects the broader philosophy underlying the Task Force's reasons for placing special emphasis on professionalism and ethics in its report.

The ethics and professionalism competency described below is the point of departure for those who teach this subject. Its components do not constitute an exhaustive list that limits them to teaching only those components. It sets out the required minimum coverage only.

The proposed wording for the ethics and professionalism competency is set out in

TABLE B.

TABLE B
Ethics and Professionalism Competency

Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,

1. Knowledge of,
 - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,
 1. circumstances that give rise to ethical problems;
 2. the fiduciary nature of the lawyer's relationship with the client;
 3. conflicts of interest;
 4. the administration of justice;
 5. duties relating to confidentiality, lawyer-client privilege and disclosure;
 6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and
 7. the importance and value of serving and promoting the public interest in the administration of justice;
 - b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
 - c. the range of legal responses to unethical conduct and professional incompetence; and
 - d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.
2. Skills to,
 - a. identify and make informed and reasoned decisions about ethical problems in practice; and
 - b. identify and engage in critical thinking about ethical issues in legal practice.

For the NCA's assistance in assessing the competencies of international students, the Committee makes one additional comment on the ethics and professionalism competency. The reference to "Canada" in the competency's preamble and in section 1(a) reflects the requirement that the graduate must have acquired the competency in a course of study that addresses the subject in the Canadian context. Presently, there is no requirement that NCA candidates satisfy this competency in the Canadian context. The Canadian context requirement will mean that in future more NCA candidates may be required to meet this competency than is currently the case. Given the Task Force's emphasis on the importance of this topic in its Canadian context, the Committee is of the view that the applicability of the competency in the NCA context is in the public interest and therefore appropriate.

For Canadian law schools that have previously allowed students to obtain a compulsory ethics credit during an international exchange program by taking an ethics course that addresses ethics in the law of the country governing the exchange program, such a credit would not be eligible for the ethics and professionalism competency.

Recommendation 2

The elaboration of the professionalism and ethics competency set out in TABLE B be approved.

APPROVED COMMON LAW DEGREE - ACADEMIC PROGRAM AND LEARNING RESOURCES

The Task Force report specifies that for graduates of a Canadian law school to be eligible to enter a law society admission program their school must offer an academic program and learning resources that comply with the national requirement.

The Task Force specifically avoids an overly prescriptive approach to the academic program, reflecting its underlying philosophy that law schools should be able to pursue an innovative and flexible pedagogical approach, in keeping with the goals and objectives of their individual programs, subject only to meeting certain minimum requirements for the purposes of entry of their graduates to law society admission programs.

The Task Force report states that,

wherever possible the institutional requirements set out in the national requirement for entry to law society admission programs should reflect current practice in Canadian law schools. This balances the regulatory objectives with law schools' desire to maintain flexibility of approach. By stating current practices as much as possible the Task Force leaves open the door for law schools to advise the Federation if current practices are no longer appropriate.¹⁰

The Committee has examined the Task Force's required components of the academic program and the learning resources and determined whether any of them require comment, clarification or elaboration to facilitate implementation.

For ease of understanding, the required components of the academic program are set out in **TABLE C** with the Committee's clarification, elaboration or direction set out in an accompanying box.

TABLE C Academic Program

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. *Academic Program*

1.1 *The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*

The Committee provides three comments here for clarification and direction, based upon and following the Task Force's own approach.

1. In specifying "three academic years" the Task Force is referring to three full-time academic years. The Committee is advised that in law schools currently offering the common law degree the "equivalent in course credits" to three

¹⁰

Task Force Report, p. 39.

full-time academic years presumptively means 90 credit hours. The Task Force refers to this in its report.

The Committee adopts this clarification so that paragraph 1.1 of the Task Force recommendation should be clarified to read:

- 1.1 The law school's academic program for study of law consists of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.
2. Many Canadian law schools offer joint degree programs in which students follow an integrated course of study with another related discipline, receiving a J.D. or LL.B. degree plus a degree from the other discipline. The typical joint degree program is four years, although some are three years. The Task Force discusses the joint degree in relation to the requirement set out in section 1.1 above:

In recent decades many Canadian law schools have introduced joint degree programs with related, but separate disciplines. The Task Force recognizes that interdisciplinary education is a rich and valuable part of law school education. Nothing in its recommendations should be interpreted to interfere with the capacity of law schools to offer such degrees. So long as the student has been engaged in a study of law for three years or its equivalent in course credits, and has acquired the competency requirements in so doing, joint degree programs should satisfy the national requirement. Law schools introducing major changes in their academic program, such as the introduction of a joint degree, should be encouraged to discuss them with the Federation to ensure that their graduates will continue to meet the competency requirements.¹¹

For graduates of joint law degree programs to be eligible to enter law society admission programs their degrees will have to meet the national requirement, which includes, among other components, the required competencies and a requirement that the graduate of the joint degree program has followed an academic program for the study of law consisting of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.

The term “an academic program for the study of law” is broad enough to encompass joint degree programs **provided that** the study of law is integrated with another discipline sufficiently related to law **and** the interwoven content is specifically designed to enhance and enrich the learning in law. The eligibility of the joint degree program to satisfy the national requirement may be easier to accomplish in a four-year joint degree than in a three-year one, particularly in view of the need to satisfy the required competencies, but it will be open to schools that wish to have their

¹¹ Task Force Report, p. 41.

joint degree programs meet the national requirement for purposes of entry of their graduates to law society admission programs to satisfy the Approval Committee that they do.

Schools will report annually on each joint degree program for which they seek approval for the purposes of entry of their graduates to law society admission programs. It is important to note that schools may choose to offer some joint degree programs for which they do not seek approval. The Federation website will list only those programs for which approval has been obtained.

3. Some Canadian law schools accept transfer students from law schools outside of Canada. Each school determines whether transfer students will be entitled to apply any of their credits from their education outside Canada toward the degree requirements of the Canadian law school. With the introduction of the competency requirements, some of which address the competency in the Canadian context (e.g. principles of Canadian administrative law) schools will need to ensure that any credits for courses taken outside of Canada toward a competency requirement that must address the subject in the Canadian context actually do so. Schools will also need to ensure that graduates of their programs who take part of their program at another institution, either through an exchange or letter of permission, meet the national requirement.

1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

Currently, Canadian law schools deliver most education through face-to-face instruction conducted with the instructor and students in the same classroom. At the same time, most Canadian law schools now supplement that face-to-face instruction to at least some extent by the use of a variety of instructional methods mediated by information technology. These methods can include electronic course management systems such as TWEN or Moodle or synchronous instruction via video-conference. Nevertheless, it is still the case that asynchronous on-line learning or traditional distance education is rarely employed in Canadian law school courses as the sole instructional method.

In its report, the Task Force recognizes that technology is having a significant impact on the delivery of legal information and legal education, and that innovation and experimentation are to be expected and encouraged. At the same time its recommendation focuses on the importance of face-to-face inter-personal connections in law school. Its report notes,

Technological advances for delivering information are moving rapidly. The Task Force does not wish to inhibit innovative delivery or experimentation

in this area. At the same time, however, it is of the view that Canadian law school education should, as it does today, provide a primarily in-person educational experience and/or one in which there is direct interaction between instructor and students. The use of the term "primarily" in the Task Force's recommendation is intended to allow for innovation and experimentation.¹²

From the Task Force's perspective, the in-person learning requirement is directed at the skills and abilities that graduates who seek entry to a law society admission program should have. The practice of law is an interpersonal endeavour. Problems are solved through interactions with others: clients, lawyers, witnesses, office staff, judges, and others. Some of these interactions may be written, but many of them are oral, and involve understanding how to deal with a person face-to-face. In particular, lawyers typically discuss legal problems with other lawyers. They need to understand how to do that. Those interactions involve legal problem solving and oral persuasion. The law school experience – involving face-to-face interactions with instructors as well as students – models that experience.

The Committee is satisfied that the Task Force's recommendation means that currently Canadian law schools are to deliver their programs mainly through in-person delivery methods. The clause "instruction and learning that involves direct interaction between instructor and students" modifies "in-person." This clause was inserted to address and permit some synchronous learning such as live videoconferencing, which is already being used to supplement the face-to-face in-person instruction that makes up most of law school education in Canada.

In the Committee's view the Task Force's reference to "primarily" in-person instruction should be considered in the context of:

- existing practices respecting face-to-face instruction in Canadian law schools;
- the extent to which some degree of alternative delivery is currently permitted; and
- the importance of allowing room for innovation in delivery approaches.

Given this context, the Committee recommends interpreting "primarily" in-person to mean that presumptively a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.

The Committee recognizes the ongoing value of law schools developing innovative and dynamic delivery approaches. As legal education and delivery

¹² Task Force report, p. 41.

methods continue to evolve the re-examination of this requirement will be appropriate and advisable. It is beyond the scope of the Committee's mandate to undertake such an examination, but it recommends that the Federation broaden the discussion by engaging those with expertise in education delivery techniques, delivery of legal education and professional regulation to consider the issues.

1.3 Holders of the degree have met the competency requirements.

This refers to the competency requirements set out in section B of the Task Force recommendations as clarified in this report, particularly in **TABLES A** and **B**.

1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.

The Task Force report emphasizes the importance of dedicated instruction in ethics and professionalism, beginning in law school. Although for all other competencies the Task Force recommends that it be left to law schools to determine how their students meet them, it specifies that respecting ethics and professionalism students must have acquired the competencies in "a course dedicated to those subjects and addressing the required competencies" defined in the Task Force report.

TABLE B reflects the clarification and elaboration of the ethics and professionalism competency that the Committee recommends.

As a further part of its mandate to implement the Task Force recommendations the Committee is clarifying what will satisfy the requirement for an ethics and professionalism "course." This is essential to effective implementation of the requirement so that:

- those who teach this subject matter understand the parameters of the requirement;
- Law Deans are in a position to address any resource implications and are able to report compliance;
- the Approval Committee is able to determine compliance; and
- the NCA is able to assess the qualifications of individuals with legal education and experience obtained outside Canada or in civil law degree programs in Canada who wish to be admitted to a law society in a common law jurisdiction in Canada.

The substantive goal of the Task Force recommendation is that serious attention be paid to ethics and professionalism in a way that is demonstrable and dedicated. At the same time it does not intend the language of the requirement to hamstring or interfere with innovative delivery. Indeed, from the Task Force's perspective, which the Committee echoes, the innovation in teaching that has been growing in a number of schools is to be encouraged.

Drawing on the valuable consultations it has had on this subject, the Committee is clarifying the recommendation in a manner that reflects the importance of the subject and the Federation's requirements, while allowing law schools to be innovative. Having considered the input it received and reflecting on the context of the Task Force's goals and recommendations on this subject, the Committee is of the view that to allow the best development of teaching in this area, the term "course" should be interpreted to mean "a demonstrable course of study" whose goal is to develop in students the ability to think about and analyze ethical and professionalism issues in the legal profession. The approved competencies would be taught as part of the demonstrable course of study, allowing freedom to go beyond those competencies to address additional content.

The "course of study" could be developed in any number of ways, for example as a single course or within an ethics curriculum taught over a number of years as units demonstrably devoted to ethics, but situated within other courses. The learning could build on the previous year's unit reflecting the increasing sophistication of the student over time.

The "demonstrable" language is meant to ensure that the dedicated approach to ethics education that the Task Force identifies as a priority can be measured.

Recommendation 3

"Course" relating to ethics and professionalism instruction be interpreted to allow for both:

- ***a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies set out in TABLE B, and***
- ***a demonstrable course of study devoted to ethics and professionalism that could be delivered,***

(1) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies set out in TABLE B; and/or

(2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies set out in TABLE B.

While there are various criteria that could be applied to determine whether a school has met the requirement for a demonstrable course of study, the Committee is reluctant to be overly prescriptive, particularly since the Federation requirement for a “course” in this subject area is a new direction.

Accordingly, the Committee has concluded that articulating a minimum number of required hours would allow for certainty, while leaving significant freedom for schools in developing the course of study.

The Committee discussed 36 hours as the appropriate number of hours for the “course” requirement. Because, however, the ethics and professionalism course requirement is a new one that may have resource and staffing implications for some schools it is of the view that there should be some flexibility respecting this component.

The Committee recommends that the requirement be satisfied if a graduate has taken a “course” (as described above) that is a minimum of 24 hours. The Committee is also of the view, however, that the ultimate goal is for the requirement to be 36 hours, the implementation of this goal to be determined at a future date to be discussed with the law schools before actually being implemented.

As discussed, the required 24 hours could be acquired in a single course or in a course of study that spans two or three years of law school (e.g. 12 hours a year for 2 years, 8 hours a year over three years) or any other way the law school determines provided it satisfies the requirement for a “demonstrable course of study.”

Recommendation 4

By 2015, graduates seeking entry to law society admission programs be required to have taken a demonstrable course of study dedicated to ethics and professionalism that is a minimum of 24 hours, is formally assessed and, at a minimum, addresses the required competences set out in TABLE B.

1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.

No clarification necessary.

Recommendation 5

The commentary and direction set out in TABLE C regarding the approved common law degree academic program requirements be approved.

Learning Resources

In developing its recommendations respecting learning resources the Task Force notes the following:

The Task Force is reluctant to define in great detail the form law school must take, particularly given the role of provincial governments in approving degree granting institutions and the complex university-based decision making process that addresses many of the law schools' physical components. The Task Force does, however, recognize that there are certain necessities for an effective legal education whose graduates can serve the public. In the Task Force's view the most important consideration is that the law school be adequately resourced to fulfill its educational mission. At a time when all public resources are subject to financial pressures, the Task Force is reluctant to be too prescriptive in its recommendations, but has concluded that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved.¹³

An environment that supports learning is critical to the development of meaningful legal education. It may be easier to assess what is sufficient with respect to already established schools than with respect to new applicants for program recognition. At the same time, it is not appropriate to set a standard based on the resources that long-established schools have that would be impossible for a new school to meet.

It is necessary to provide additional guidance under "learning resources" to assist law schools to know what information they are expected to report on an annual basis. This will ensure consistency of information across schools and across years.

The Committee agrees with the Task Force's approach to resources that recognizes a connection between the resource requirements and a school's particular objectives. This allows for different types of law schools to exist that require different levels of resources. At the same time, however, the school's objectives and resources must be sufficient to meet the national requirement.

¹³ Task Force Report. p.42.

The Committee has consulted with the CCLD concerning the type of information that would elicit a reasonable picture of the learning resources to which the Task Force recommendations are directed. In addition, it has considered the approaches that other professional regulators take on this issue. Its goal is that law schools provide sufficient information to allow the Approval Committee to understand the learning resources context within which the national requirement is being met in each school.

To ensure that the information sought from law schools is both relevant and necessary it would be useful to use an iterative process to develop and refine the information to be provided under the learning resources section of the annual report. As the national requirement will not come into effect until 2015, the reports that law schools will file in 2012, 2013 and 2014 will be progress reports. The Committee considers these years as providing the opportunity for law schools and the Approval Committee to review the initial approach to the learning resources reporting and develop a standardized approach that will provide the most appropriate information and be applied as consistently as possible to all degree programs, whether established or new.

The guidance set out is intended for the responses in the 2012 report. Thereafter the Approval Committee should have the authority to adapt and change the required information as it considers appropriate flowing from the iterative approach.

For ease of understanding the required components of the learning resources are set out in **TABLE D** with the Committee's clarification, elaboration or direction set out in an accompanying box.

TABLE D Learning Resources

- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

The Committee recommends that the following information be provided in this section:

- General description of numbers of full-time faculty, contract instructors, sessional lecturers and support staff, including significant changes from previous year.
- General description of full-time faculty, contract instructor and sessional lecturer qualifications.
- Number of full-time equivalent students in each program.
- General description of student support services.
- Overview of law school operating budget for the academic program from all sources, and sources of funding.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

The Committee recommends that the following information be provided in this section:

- Overall description of law school space, including whether the space is adequate for the law program(s), any space challenges faced by the school and their impact on the program and proposed or planned solutions.
- Description of space available to the law school to carry out the academic program offered, including seminar rooms, quiet study space for students, etc
- Description of accessibility of the current space.

2.3 The law school has adequate information and communication technology to support its academic program.

The Committee recommends that the following information be provided in this section:

- Description of what IT services are provided at the law school.
- Description of dedicated or shared staff and level of support provided to faculty, staff and students.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

(A useful reference for this requirement is the Canadian Academic Law Library Directors Association's standards.)

The Implementation Committee recommends that the following information be provided in this section:

- Overview of library staff complement, qualifications and reporting structure.
- Overview of library facilities and description of collection and collections policies.
- Overview of library acquisitions budget.
- General description of support services available to faculty, students and other library users.

Recommendation 6

The commentary and direction set out in TABLE D regarding the approved common law degree required learning resources be approved.

MEASURING COMPLIANCE

In considering an appropriate national compliance mechanism the Task Force states:

The requirement for a national compliance mechanism does not... necessitate an intrusive or onerous approach. Existing Canadian law schools offer a high standard of education and the Task Force is satisfied that compliance with the competency requirements will not pose difficulty for any of them. At the same time, however, the Task Force does recognize that the creation of requirements represents a change in current practices and any compliance mechanism, however modest, will require some adjustment. It also recognizes that the recommendation for a stand-alone course relating to ethics and professionalism and the requirements to address competencies may require adjustment by some law schools.

The Task Force recommends that the compliance mechanism for law schools should be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function.

In the annual report the Dean would confirm that the law school has conformed to the academic program and the learning resources requirements and would explain how the program of study ensures that each graduate of the law school has met the competency requirements.¹⁴

¹⁴ Task Force Report, pp. 43-44.

Among other tasks the Task Force report recommends this Committee undertake are the development of “the form and substance of the standardized annual law school report” and a mechanism to address non-compliance.

In developing its recommendations for the compliance mechanism the Committee has been guided by the Task Force’s views and has addressed the following issues:

- Compliance Models
- Form and Content of the Standardized Annual Report
- Compliance Process
- Publication of the reports

COMPLIANCE MODELS

The Committee recommends that law schools be entitled to approach compliance using two possible models:

- Program Approval Model
- Individual Student Approval Model

Program Approval Model

Law schools in Canada offer a variety of programs, including the traditional three full-time academic years or equivalent in course credits (presumptively 90 credits) J.D. or LL.B. program and joint degree programs, discussed above.¹⁵

A law school that applies the Program Approval Model to a particular program will require that each graduate of that program meet the national requirement for entry to law society admission programs. These law schools will not permit students in these programs to have the option to graduate without having met the competency requirements.

In the annual report on these programs the Dean will describe the process the school follows to determine that graduates in each of these programs meet the competency

¹⁵ Law schools also offer LL.M. programs that are not relevant to the discussion here.

requirements, in accordance with the national requirement.¹⁶

In schools that apply the Program Approval Model to a given program, graduates from approved programs will by definition have met the competency requirements. In granting the degree the school will be confirming this.

Schools that apply the Program Approval Model, generally, may also have joint degree programs for which they do not seek approval. The Individual Student Approval Model may be relevant to these programs. The Federation website will list all the joint degree programs for which these schools have program approval.

Individual Student Approval Model

Traditionally, there are law school graduates who choose not to be licensed to practise law. There are myriad career paths for which a J.D. or LL.B. degree is invaluable, but for which a license to practise is unnecessary. Although the required competencies in the national requirement have been designed to allow for ample additional opportunity for students to pursue their academic and intellectual interests in law school, it is possible that some students who do not want to be licensed to practise law would prefer not to satisfy all the required competencies. The Individual Student Approval Model will allow for this approach.

The Committee respects law schools' right to foster this academic path for their students, which may be in keeping with the school's objectives and mandate. Its only concern is that law societies be in a position to easily verify whether graduates from those programs, who do seek entry to law society admission programs, have met the required competencies.

If a school chooses the Program Approval Model for a given program, by definition every student granted a J.D. or LL.B. degree in an approved program will have met the competencies. If a school chooses the Individual Student Approval Model for a given program it will be necessary for individual transcripts for each graduate to indicate whether

¹⁶ As part of their existing internal processes law schools already conduct a "degree audit" for each student to ensure he or she has met all the program requirements necessary to graduate, including having met the school's required number of credit hours and fulfilled its compulsory courses or other requirements. Where a school is following the Program Approval Model for a given program, this degree audit process will also include a determination that each student will have met the Federation's competency requirements upon graduation.

he or she has met the national requirement.

A graduate who has not met the national requirement and subsequently wishes to enter a law society admission program can fulfill the missing competencies through the NCA by obtaining a Certificate of Qualification. It will be necessary for that graduate to provide the NCA with an official document from its degree granting institution setting out which competencies must still be fulfilled.

Recommendation 7

Law schools be entitled to comply with the national requirement by using the Program Approval Model or the Individual Student Approval Model for a given program, including joint degree programs.

Recommendation 8

A graduate from a school applying the Individual Student Approval Model to a given program be eligible for entry to law society admission programs if he or she provides an official transcript from the degree granting institution certifying that he or she has met the national requirement for entry to law society admission programs.

Recommendation 9

A graduate who has not met the national requirement who subsequently seeks entry to a law society admission program be required to obtain first a Certificate of Qualification from the NCA.

Recommendation 10

The Federation website identify whether schools apply the Program Approval Model or the Individual Student Approval Model to a given program.

FORM AND CONTENT OF THE STANDARDIZED ANNUAL REPORT

The standardized annual report is the mechanism by which a law school will report compliance with the national requirement.

A standardized annual report:

- provides a template by which the Approval Committee will determine compliance with the national requirement;
- addresses each of the components of the national requirement with sufficient information and supporting documentation to allow compliance to be determined;
- enables a law school to report compliance in a transparent and efficient way;
- identifies the degree programs for which a school seeks approval for entry of graduates to law society admission programs and demonstrates how each program meets the requirements;
- identifies law school programs as following the Program Approval Model or the Individual Student Approval Model;
- provides overview information on the law school to situate the report in the context of the school's objectives and approach;
- documents changes to individual law school programs. Each year each law school report will comment on changes to any previously approved programs and the effective date of such changes. With annual reporting it will be essential that any changes to previously approved programs are identified and also approved. Schools will be encouraged to discuss proposed changes with the Approval Committee before they are implemented to ensure they will meet the national requirement; and
- documents the application of the national requirement.

The Committee has developed a draft form for the standardized annual report that addresses these purposes. The draft form, which was provided to the CCLD, is set out at

Appendix 3.

The draft form is a living document that will evolve over the years as law schools and the Approval Committee seek to ensure its continued relevance and effectiveness. The Approval Committee should be authorized to make any changes, revisions or additions to the form as it determines necessary so long as the changes, revisions or additions conform to the approved national requirement and reflect the purposes described above.

Recommendation 11

The Canadian Common Law Program Approval Committee (the Approval Committee) be authorized to make any changes, revisions or additions to the standardized annual report form set out in Appendix 3 as it determines necessary, provided the changes, revisions or additions conform to the national requirement and reflect the purposes as described in this report.

COMPLIANCE PROCESS

a) Existing Canadian Common Law Programs

The national requirement applies to graduates from Canadian common law schools beginning in 2015 and annually thereafter.

Programs whose students graduate in 2012, 2013 and 2014 will continue to be recognized under the current processes and are not subject to the national requirement. Law societies will continue to accept 2012, 2013 and 2014 Canadian common law school graduates into their admissions programs on the pre-national requirement criteria.

The annual report on their programs that law schools file in 2012, 2013 and 2014, will, therefore, be progress reports leading to determination of compliance in 2015. Reports submitted in 2012, 2013 and 2014 will describe the program actually followed by the students to the date of the report, as well as reporting on plans for the program to 2015 directed at meeting the national requirement. The Approval Committee will provide feedback to schools on their progress towards meeting the national requirement for 2015.

From 2015 and annually thereafter the annual reports will report on the program the graduates of that year will have completed. The Approval Committee will determine compliance with the national requirement.

It is expected that, typically, a program approved for graduates of 2015 will continue to be approved thereafter, unless there are significant changes to the program in the areas subject to the national requirement. In such cases, the Approval Committee will undertake the inquiry necessary to ensure that the program continues to meet the national requirement.

b) New Canadian Common Law Programs

Where a new program is being proposed, either by an established Canadian law school that already offers J.D. /LL.B. programs and wishes to add additional programs or by a Canadian institution that does not yet offer any J.D. /LL.B. programs but seeks to do so,¹⁷ the school will go through a two stage process. The first stage is the consideration of the proposal for a new program. That proposal will include a plan for implementing the new program, in which, typically, parts of the program are put in place over time.

The second stage begins once the proposal and plan have been approved, and implementation is underway. During this second stage, the school will report annually on the implementation of the plan, using a modified version of the annual report.

TABLE E sets out the Committee's recommended compliance process respecting new and existing programs to determine compliance with the national requirement.

¹⁷ This would also include a Canadian institution already offering a civil law degree that seeks to offer a J.D. /LL.B.

TABLE E
Compliance Process

a) Existing Canadian Common Law Programs

1. Upon receipt of a law school's completed annual report, the Approval Committee reviews it and any supporting documents in accordance with a specified timeline, a sample of which is set out in **Appendix 4**.¹⁸
2. The Approval Committee determines compliance with the national requirement and provides a draft report to the law school, setting out the Committee's conclusions and the basis for those conclusions. The law school is invited to provide comments on the draft report.
3. If the Approval Committee is satisfied that the school's program(s) meets the national requirement, the Approval Committee's draft report is finalized and provided to the law school and posted on the Federation website.
4. If the Approval Committee is of the view that the annual report raises issues regarding compliance, its draft report identifies the issues using one or more of the following rating categories:

- o **Deficiency** - indicates non-compliance with one or more requirements. If a "deficiency" has been identified and the school and the Approval Committee cannot agree on how to address it, the Approval Committee issues its final report.

The compliance process will be an iterative one, the goal of which is to resolve deficiencies wherever possible before the Approval Committee issues a final report. The iterative process ensures that, if useful and directed, discussion toward a solution continues in an attempt to resolve the issues. It will be important to keep in mind, however, that there are annual time lines that must be met for issuing the Approval Committee's report. The Approval Committee ends discussion if it determines no further progress is being made.

- o **Concern** - indicates that although one or more requirements is currently met, it is at a minimum level that could deteriorate to become a deficiency. A school may note the "concern" without acting upon it, but it may be advisable for the school to resolve the concern, since it would be noted in the Approval Committee's final report. The iterative process described under "deficiency" could be used to resolve the "concern" if the parties agree.
- o **Comment** - this addresses a missing detail, a question, or a suggestion for more information. A school may take note of a "comment" without taking action upon it, but if it wishes to clarify or respond the Approval Committee can then re-issue its report reflecting this.

¹⁸ **Appendix 4** sets out the sample timeline for the 2012 report. That report will be a progress report. The basic timeline would also apply in 2013 and 2014 and in 2015 and thereafter when the national requirement is in force.

5. As set out above, the school has the opportunity to respond to the draft report within a specified period of time. If the Approval Committee seeks more information or other action, the school may provide it or agree to undertake to do what is requested of it.
6. The conclusion of the Approval Committee's final report sets out one of the following ratings:
 - o "The law program has complied with the national requirements. *Approved.*"
 - o "The law program has mostly complied with the national requirements, except for deficiencies in the following areas... *Approved with notice to remedy specified areas of non-compliance.*"

The notice to remedy specifies that for the program to retain approved status the deficiencies must be addressed by the next reporting period, or in exceptional cases, by a subsequent reporting period.
 - o "The law program has not complied with the national requirement. *Not approved.*"
7. Only the final report of the Approval Committee will be public. All draft reports and ongoing discussions will not be public. The progress reports prepared in 2012, 2013 and 2014 will also not be public.

b) New Canadian Common Law Programs

Proposal Stage

8. Using the annual report format, the school provides its proposal for a new program. The proposal includes a plan describing how and when the program will achieve each of the provisions of the national requirement. The proposal is to be provided before the school takes steps to commence the program.
9. The Approval Committee determines prospectively whether the proposal, including implementation plan, if implemented, would comply with the national requirement. It provides a draft report to the law school, setting out its conclusions and the basis for those conclusions. The law school is invited to provide comments on the draft report.
10. When the Approval Committee issues a draft report respecting a new program it may contain "comments," "concerns" and/or "deficiencies" for the proposed new law school program to address before the Approval Committee issues a final report, and the school may respond as set out above. As in the case of the compliance process for established programs the process will be an iterative one leading to the final report.

11. Approval for a new program will be prospective because the first students will not graduate from the program until a number of years in the future. Accordingly the ratings for such programs will be:
- o “The proposal and implementation plan for a law program, if followed, will comply with the national requirement. *Preliminary Approval, subject to implementation of the program as proposed.*”
 - o The law program as proposed will not comply with the national requirement. *Not Approved.*”
12. Only the final report of the Approval Committee will be public. All draft reports and ongoing discussions will not be public.

Reporting Stage

13. The process in paragraphs 1-7, modified to measure progress against the implementation plan, continues to be followed annually until the first graduates of the program are in their final year. Thereafter the process in paragraphs 1-7 applies, without modification.

The Approval Committee should be authorized to make any changes, revisions or additions to the reporting timeline as it determines necessary to ensure that the compliance process in **TABLE E** operates in an effective manner.

Recommendation 12

The compliance process set out in TABLE E be approved.

Recommendation 13

The Approval Committee be authorized to make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.

PUBLICATION OF REPORTS

Beginning in 2015 when the national requirement comes into effect and annually thereafter the Approval Committee's final reports will be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought. This recommendation is subject to the proviso that any information subject to privacy provisions or other personal or confidential information will not appear in the public report.

The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model. This will be important information for law societies, the NCA and law students.

Because the national requirement does not come into effect until 2015, the reports in 2012, 2013 and 2014 will be progress reports and will not be public.

Recommendation 14

Beginning in 2015 and annually thereafter the Approval Committee's final reports be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.

To reflect that the national requirement does not come into effect until 2015, the progress reports in 2012, 2013 and 2014 not be public.

THE CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE

As discussed above, the Committee recommends that the "monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining

the Federation’s relationship with Canadian law schools,” be called the Canadian Common Law Program Approval Committee (“the Approval Committee”). The name identifies the committee’s primary responsibility, but is not intended to limit the Approval Committee’s role to this single area. To fulfill the Committee’s mandate to make recommendations about the monitoring body this report addresses the following:

- Structure of the Approval Committee
- Jurisdiction and Mandate
- Committee Member Qualifications and Committee Composition
- Resourcing

STRUCTURE OF THE APPROVAL COMMITTEE

Given that law societies have put in place a national requirement for entry to law society admission programs, it is logical that the Approval Committee be part of the Federation. As a national committee it will ensure a coherent approach to the implementation of the national requirement.

The Working Group report establishing the Committee directed that it consider the possible role of the NCA in the compliance process. While it may make sense in the future to bring the two bodies together, the Committee is of the view that it is important at this stage for the Approval Committee to be an entity structurally separate from the NCA. This will allow the national requirement compliance process to establish a unique profile that will be important, particularly in the early years of implementation.

In addition, the NCA has an established profile as the body that assesses the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada. Its mandate and workload are already demanding. At this stage it should not be required to take on a new function.

The Approval Committee should be established and populated forthwith to ensure that it is in place to assess the first law school compliance reports that will be due in 2012.

Recommendation 15

The Federation establish a new committee to be called the Canadian Common Law Program Approval Committee (the Approval Committee).

JURISDICTION AND MANDATE

The creation of the Approval Committee offers an opportunity to go beyond the required compliance function that was only one of the Task Force's interests. While this compliance function must be a central responsibility, the Approval Committee also has an important role to play in enhancing the institutional relationship between law societies and law schools at a national level. As the Federation continues to develop national approaches to regulatory issues (e.g. national standards for admission to law societies, model codes of conduct etc.), there will be increasing opportunities to advance the discussion of the continuum of legal education. The Approval Committee should play a role in this discussion.

Given that recommended membership of the Approval Committee will include both Law Deans and law society regulators from across the country, the opportunity for a meaningful exchange of ideas is significant.

Recommendation 16

The Approval Committee have the following mandate:

- ***To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.***
- ***To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.***
- ***To make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.***
- ***To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.***

- ***To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.***
- ***To ensure appropriate training for its members.***
- ***To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.***

To ensure that the national requirement and the compliance process remain relevant and effective it is essential that the Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process. The first evaluation should be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting time line and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the time line.

Nothing in this recommendation should be seen as precluding adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate above. It should be open to the Approval Committee to recommend the timing of the evaluations.

Recommendation 17

The Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process, the first to be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting timeline and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the timeline. Nothing in this recommendation should preclude adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate in Recommendation 16. It should be open to the Approval Committee to recommend the timing of the evaluations.

COMMITTEE MEMBER QUALIFICATIONS AND COMMITTEE COMPOSITION

The Approval Committee's size should reflect both the need for a cross section of qualifications and the advantage of establishing a relatively small group to develop a coherent and expert approach to the issues.

The Committee has considered the qualifications that should be represented on the Approval Committee and the appointment process, size, member composition and term of service for this new body.

TABLE F contains the recommended qualifications.

TABLE F Qualifications for Members of the Approval Committee

The members of the Approval Committee should be chosen with a view to competence and involvement with and understanding of the issues. The following qualifications should be represented on the Approval Committee, although there should not be a requirement that each member possess all the qualifications:

- Institutional knowledge concerning law societies and the Federation.
- Diversity of experience and perspective.
- Understanding of the regulation of lawyers and the operation of law societies.
- Experience with the regulation of lawyers and the operation of law societies and admission to the profession.
- Experience as a Law Dean or law school administrator (includes Associate, Assistant and Vice Deans).
- Bencher experience.
- Bilingualism, coupled with a common law background.

All members of the Approval Committee should,

- have sufficient time to devote to the work;
- have sound judgment; and
- the ability and willingness to work cooperatively and in a team for the effective implementation of the national requirement.

TABLE G contains the recommended appointment process, size, member composition and term of service for the Approval Committee.

TABLE G
Approval Committee Composition

- The Approval Committee will have seven members, to be appointed by the Federation Council as follows:
 - o Three current or former Law Deans or Law School Administrators (includes Associate, Assistant and Vice Deans), to be recommended by the CCLD.
 - o One Law Society CEO or designate of the CEO.
 - o Three lawyers with experience in law society regulation.
 - o The Chair of the Approval Committee will be one of the three lawyers or the CEO or staff designate, and will be named as Chair by the Federation Council.
 - o If none of the three lawyers is a Federation Council member, the Federation Council may appoint one of its members as a non-voting liaison.
 - o The Managing Director of the NCA will be invited to attend the meetings, without being a member or having a vote.
- Staff to the Approval Committee who attends the meetings will not be a member or have a vote.

- The term for each of the seven members will be three years, renewable once in the sole discretion of Federation Council. The term appointments will be made on a staggered basis, so that the terms of no more than three members will expire in any year. Some of the initial appointments may be made for shorter terms to enable the establishment of the staggered terms, as the Federation Council deems appropriate.

Recommendation 18

The qualifications to be represented among the members of the Approval Committee set out in TABLE F be approved.

Recommendation 19

The appointment process, size, member composition and term of service for the Approval Committee set out in TABLE G be approved.

RESOURCING

The Committee is not in a position to state with certainty what the administrative and other resource needs of the Approval Committee will be. Clearly it will be essential to its effective operation that there be sufficient resources to support its work, including professional and support staff, office space and financial resources. It will be important that staffing be determined forthwith to support the Approval Committee.

The Committee recommends that law societies, through the Federation, fund the Approval Committee.

Recommendation 20

The Approval Committee be resourced forthwith and with sufficient professional and support staff and financial resources to enable it to fulfil its mandate. Law societies, through the Federation, fund the Approval Committee.

CONCLUSION

This report and its recommendations are the blueprint for implementing the Task Force recommendations, providing the guidance and direction necessary for law schools, law societies, the NCA and the Approval Committee. The recommendations have been developed in a spirit of collaboration and with a view to establishing an implementation structure that is clear, effective and appropriately balanced in its effect on law schools, law societies, the NCA and the Approval Committee.

The recommendations recognize that the implementation process must be adaptable to changing conditions and realities in law societies and law schools. The composition of the Approval Committee ensures that discussion on the issues will include both law schools and law societies with the goal of ensuring the ongoing relevance of the national requirement in the public interest and recognizing the importance of Canadian law school education that is innovative and flexible.





APPENDIX 1

Recommendations from the Task Force on the Canadian Law Degree

October 2009

FEDERATION OF LAW SOCIETIES OF CANADA'S TASK FORCE ON THE CANADIAN COMMON LAW DEGREE

RECOMMENDATIONS

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

A. Statement of Standard

1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

1.2 Legal Research

The applicant must have demonstrated the ability to,

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

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- communicate clearly in the English or French language;
- identify the purpose of the proposed communication;
- use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and

- effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- d. the duty to communicate with civility;
- e. the ability to identify and address ethical dilemmas in a legal context;
- f. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,
 - i. circumstances that give rise to ethical problems;
 - ii. the fiduciary nature of the lawyer's relationship with the client;
 - iii. conflicts of interest;
 - iv. duties to the administration of justice;
 - v. duties relating to confidentiality and disclosure;
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- principles of common law and equity;
- the process of statutory construction and analysis; and
- the administration of the law in Canada.

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- Canadian criminal law; and
- the principles of Canadian administrative law.

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- contracts, torts and property law; and
- legal and fiduciary concepts in commercial relationships.

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. Academic Program

1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.

1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

1.3 Holders of the degree have met the competency requirements.

1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.

1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.

2. Learning Resources

2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

2.3 The law school has adequate information and communication technology to support its academic program.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.
6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.



APPENDIX 2

Working Group Report on the Establishment of the Implementation Committee

May 2010

RECOMMENDED PROCESS FOR ESTABLISHING THE IMPLEMENTATION COMMITTEE

1. An Implementation Committee should be established to be known as the Federation of Law Societies of Canada's Common Law Degree Implementation Committee ("the Implementation Committee").

2. The Implementation Committee's mandate should be,
 - a. to determine how compliance with Section C (Approved Canadian Law Degree)¹ of the recommendations of the Task Force on the Canadian Common Law Degree will be measured. Its mandate may include clarifying or elaborating on the recommendations, where appropriate, to ensure their effective implementation, but will not include altering the substance or purpose of them; and

 - b. to make recommendations as to the establishment of a monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining the Federation of Law Societies of Canada's ("the Federation") relationship with Canadian law schools. The Implementation Committee should consider any role the National Committee on Accreditation might play in that monitoring process.

3. The Implementation Committee should have seven members, as follows:
 - a. Two law school deans chosen, where possible, from among those deans currently serving on Federation committees.

 - b. At least one law society member who served on the Task Force on the Canadian Common Law degree.

¹ Section C incorporates by reference the recommendations in Sections A and B. The Task Force Recommendations are attached at the end of this report.

- c. At least one law society member who sits on the current Executive of the Federation.
 - d. At least one law society member who did not sit on the Task Force on the Canadian Common Law Degree.
 - e. At least one sitting bencher, either elected or appointed.
4. The Chair of the Implementation Committee should be one of the law society members. The Managing Director of the National Committee on Accreditation should be invited to attend the Implementation Committee meetings, without being a member of the Committee. The Federation of Law Societies Executive should appoint the Implementation Committee members and name the Chair.
 5. Subject to the Federation's approval, the Implementation Committee should be entitled and encouraged to seek assistance from individuals in law societies, law school faculties and elsewhere as it considers appropriate to ensure the effective carrying out of its mandate.
 6. To ensure that the Implementation Committee can carry out its mandate effectively, it should receive appropriate resourcing and funding, including staff and research assistance.
 7. The Implementation Committee should present its final report to Federation Council no later than September 2011, with approval sought from law societies by December 2011. The Implementation Committee should begin meeting no later than June 2010.



APPENDIX 3

Canadian Common Law Degree Law School Report Form

Common Law Degree
Implementation Committee

August 2011



Canadian Common Law Degree Law School Report Form

Submitted by:

Name of institution

Faculty name

Date

Canadian Common Law Degree Law School Report Form

PREFACE AND PURPOSE OF PROCESS:

Each Canadian law school with a common law degree program is to complete the following report form to enable the Canadian Common Law Program Approval Committee (Approval Committee) to determine that the law school's graduates have earned degrees that meet the Federation of Law Societies of Canada's national requirement (national requirement) for entry to the admission programs of law societies in Canadian common law jurisdictions. The form contains two parts. Part 1 seeks information common to all the law school's programs and Part 2 seeks information respecting each program for which the law school seeks approval. Law schools will complete a Part 2 for each program, including joint programs, for which approval is sought.

Beginning in 2015 and annually thereafter the Approval Committee's final reports will be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. Because the national requirement does not come into effect until 2015, the reports in 2012, 2013 and 2014 will be progress reports and will not be public.

The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.



Canadian Common Law Degree
Law School Report Form

Contact Information

Name of Faculty/School:

Address:

Telephone: _____

Fax: _____

Web Site Address (URL):

Contact Person

Name: _____

Title: _____

Telephone: _____

Fax: _____

E-mail: _____



Canadian Common Law Degree
Law School Report Form

Signature Form

(Name of Institution and Faculty/School)

submits the following documentation to the Federation of Law Societies of Canada in accordance with the requirements for approval of the common law degree for purposes of entry of their graduates to the admission programs of law societies in Canadian common law jurisdictions.

The information submitted in this Report is a true and accurate description of the law faculty/school's academic program and learning resources on which information is requested.

Signature of Dean or other Administrative Head of the Faculty/School

Name

Title

Date



Canadian Common Law Degree Law School Report Form

GLOSSARY OF TERMS - TBD

GENERAL INSTRUCTIONS - TBD

[The commentary and elaboration on the competencies and any other guidance will be provided here.]

CALENDARS

Electronic copies of the latest calendar must be included. In cases where the latest calendar information does not correspond to the curriculum of the upcoming graduation class, an appropriate explanation must be part of the documentation provided.

EXHIBITS

The following supplemental information should be attached at the end of the completed report.

- Exhibit 1: Documents describing the processes and policies for student admission, promotion, and graduation
- Exhibit 2: Copies of degree certificates and transcript entries for all variations of the program [This might need an explanation / examples – such as joint degrees with other professional faculties, joint degrees with other universities etc.]
- Exhibit 3: The program may wish to include a matrix of course and other offerings against the national requirements. See example at xxxx.
- Exhibit 4: Any other document that the program deems relevant for evaluation.

WHERE TO SEND YOUR MATERIALS

[Contact information for Approval Committee will be inserted.]



Canadian Common Law Degree Law School Report Form

PART 1: INFORMATION COMMON TO ALL THE LAW SCHOOL'S PROGRAMS

Please provide a general description of the law school/faculty and any other introductory material.

Please list below all programs, including joint programs, offered by the law school and which compliance model will be followed for each, if any:

Names of Programs	Compliance Model (program approval, individual student approval, or no approval will be sought)



Canadian Common Law Degree Law School Report Form

1. Learning Resources:

1.1 *The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

The Implementation Committee recommends that the following information be provided in this section:

- General description of numbers of full-time faculty, contract instructors, sessional lecturers and support staff, including significant changes from previous year.
- General description of full-time faculty, contract instructor and sessional lecturer qualifications.
- Number of full-time equivalent students in each program.
- General description of student support services.
- Overview of law school operating budget for the academic program from all sources, and sources of funding.

1.2 *The law school has adequate physical resources for both faculty and students to permit effective student learning.*

The Implementation Committee recommends that the following information be provided in this section:

- Overall description of law school space, including whether the space is adequate for the law program(s), any space challenges faced by the school and their impact on the program and proposed or planned solutions.
- Description of space available to the law school to carry out the academic program offered, including seminar rooms, quiet study space for students, etc.
- Description of accessibility of the current space.

1.3 *The law school has adequate information and communication technology to support its academic program.*

The Implementation Committee recommends that the following information be provided in this section:

- Description of what IT services are provided at the law school.
- Description of dedicated or shared staff and level of support provided to faculty, staff and students.

Canadian Common Law Degree Law School Report Form

- 1.4 *The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*

(A useful reference for this requirement is the Canadian Academic Law Library Directors Association's standards.)

The Implementation Committee recommends that the following information be provided in this section:

- Overview of library staff complement, qualifications and reporting structure.
- Overview of library facilities and description of collection and collections policies.
- Overview of library acquisitions budget.
- General description of support services available to faculty, students and other library users.

PART 2: INFORMATION SPECIFIC TO EACH PROGRAM

Please indicate under which of the following your program is applying for approval, for this reporting period:

- Program Approval Model: Each graduate must have obtained an approved law degree for purpose of entry to law society bar admission/licensing programs
- Individual Student Approval Model: The law school will individually evaluate each student and determine which graduates will have an approved law degree for purpose of entry to law society bar admission/licensing programs.

COMPETENCY REQUIREMENTS

1. Skills Competencies

The applicant must have demonstrated the following competencies:

Canadian Common Law Degree Law School Report Form

1.1 Problem Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

Please describe how your graduates will meet this requirement (supporting documents may be attached):

1.2 Legal Research

The applicant must have demonstrated the ability to,

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



Canadian Common Law Degree Law School Report Form

Please describe how your graduates will meet this requirement (supporting documents may be attached):

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

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

Please describe how your graduates will meet this requirement (supporting documents may be attached):

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,

1. *Knowledge of,*
 - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,*
 1. *circumstances that give rise to ethical problems;*



Canadian Common Law Degree
Law School Report Form

2. *the fiduciary nature of the lawyer's relationship with the client;*
 3. *conflicts of interest;*
 4. *the administration of justice;*
 5. *duties relating to confidentiality, lawyer-client privilege and disclosure;*
 6. *the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and*
 7. *the importance and value of serving and promoting the public interest in the administration of justice.*
- b. *The nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public.*
 - c. *The range of legal responses to unethical conduct and professional incompetence;*
 - d. *The different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.*
2. Skills to,
- a. *identify and make informed and reasoned decisions about ethical problems in practice; and*
 - b. *identify and engage in critical thinking about ethical issues in legal practice.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):



3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

Please describe how your graduates will have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. (Supporting documents may be attached):

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

Canadian Common Law Degree Law School Report Form

3.2 Public Law of Canada

The applicant must have an understanding of the principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

3.3 Private Law Principles

The applicant must demonstrate an understanding of the principles that apply to private relationships, including,

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships*

Please describe how your graduates will meet this requirement (supporting documents may be attached):



Canadian Common Law Degree Law School Report Form

APPROVED CANADIAN LAW DEGREE

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria;¹⁹

4. Academic Program

4.1 The law school's academic program for the study of law consists of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.

Please describe how your graduates will meet this requirement (supporting documents may be attached):

4.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

Please describe how your graduates will meet this requirement (supporting documents may be attached):

4.3 Holders of the degree have met the competency requirements.

Please add any comments in addition to the responses to the competency requirements, above:

¹⁹ The Approved Canadian Law Degree criteria include both the Academic Program, in Part 2 of this form, and the Learning Resources, in Part 1 of this form.



Canadian Common Law Degree
Law School Report Form

Please describe how your program will ensure that transfer students from programs other than a Federation approved Canadian common law program will meet the national requirement:

Please describe how your program will ensure that graduates of your program who take part of their program at another institution (either through an exchange or letter of permission) will meet the national requirement:

Canadian Common Law Degree Law School Report Form

4.4 *The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies. (“Course” is properly interpreted to allow for both,*

- *a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies, and*
- *a demonstrable course of study devoted to ethics that could be delivered,*
 - (1) *within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies; and/or*
 - (2) *in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

4.5 *Subject to special, circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):





APPENDIX 4

Common Law Program Approval Timelines

Common Law Degree
Implementation Committee

August 2011

Canadian Common Law Program Approval Timelines

Draft for 2012 Process

This calendar is an approximate timeline of the approval process. The dates may vary depending on your situation.

Transition note: The Canadian Common Law Program National Requirement comes into effect for 2015 graduates. Therefore, the 2012, 2013 and 2014 approval processes will be prospective. That is, the Committee will be evaluating, at least in part, the future plans for the law programs, for which approval is being sought. As of 2015, and every year thereafter, the Committee will evaluate the program followed by the graduates of that year.

<i>Date</i>	<i>Event</i>	<i>Action by</i>
October - November 2011	Draft reporting form and instructions are distributed to the law schools for advance information.	Staff
November 2011	Dean acknowledges receipt of documentation and timelines for report completion.	Dean
December 2011	Preparation of report begins.	Dean/Law School Faculty and Staff
January 2012	Final version of reporting form is sent to the Dean.	Staff
February/ March 2012	Completed report is sent to Staff.	Dean
March 2012	Staff review form, seek any clarification required from the law school, and distributes it to the Committee members.	Staff
April 2012	Committee meets to consider the reports.	Committee and Staff



<i>Date</i>	<i>Event</i>	<i>Action by</i>
May 2012	<p>Draft decision is sent to Dean for comment.</p> <p>Dean sends his/her comments/responses, if any, to Staff.</p> <p>Dean's comments, if any, are sent to Committee for review and response. Discussions on any deficiencies take place and involve the Dean, Committee Chair or his/her delegate.</p> <p>Committee finalizes decisions.</p>	<p>Staff</p> <p>Dean</p> <p>Staff</p> <p>Committee</p>
June 2012	<p>Committee Final Report is prepared and reviewed.</p> <p>Committee Final Report is sent to Dean by June 30, 2012.</p>	<p>Committee Chair and Staff</p> <p>Committee Chair and Staff</p>
July 2012	<p>Report on 2012 reviews is forwarded to Federation and law societies for information. No website posting because 2012 is a progress report.</p>	<p>Staff</p>





The Law Society of
Upper Canada | Barreau
du Haut-Canada

Report to Convocation October 27, 2011

Professional Development & Competence Committee

COMMITTEE MEMBERS

Thomas Conway (Chair)
Mary Louise Dickson (V-Chair)
Alan Silverstein (V-Chair)
Constance Backhouse
Larry Banack
Jack Braithwaite
John Callaghan
Cathy Corsetti
Adriana Doyle
Larry Eustace
Alan Gold
Howard Goldblatt
Susan Hare
Jacqueline Horvat
George Hunter

Vern Krishna
Michael Lerner
Dow Marmor
Wendy Matheson
Susan McGrath
Janet Minor
Barbara Murchie
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Linda Rothstein
Catherine Strosberg
Joseph Sullivan
Robert Wadden
Peter Wardle

**Purpose of Report: Decision
Information**

**Prepared by the Policy Secretariat
(Sophia Spurdakos 416-947-5209)**

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COMMITTEE PROCESS

1. The Committee met on October 13, 2011. Committee members Tom Conway (Chair), Mary Louise Dickson (Vice-Chair), Alan Silverstein (Vice-Chair), Constance Backhouse, John Callaghan, Cathy Corsetti, Adriana Doyle, Larry Eustace, Howard Goldblatt, Jacqueline Horvat, Vern Krishna, Michael Lerner, Dow Marmor, Wendy Matheson, Barbara Murchie, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Linda Rothstein, Cathy Strosberg and Robert Wadden attended. Staff members Diana Miles and Sophia Sperdakos also attended.

FOR DECISION

FEDERATION OF LAW SOCIETIES OF CANADA'S COMMON LAW DEGREE IMPLEMENTATION COMMITTEE - FINAL REPORT FOR APPROVAL

MOTION

2. That Convocation approve the final report and recommendations of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee, set out at APPENDIX 3.

Introduction and Background

3. In 2009 and early 2010 all law societies, including the Law Society of Upper Canada, approved the final report and recommendations of the Federation of Law Societies of Canada's Task Force on the Canadian Common Law Degree. The Report developed a national requirement for entry to bar admission and licensing programs of law societies in the common law jurisdictions. The Executive Summary and Recommendations of the 2009 Task Force Report are set out at APPENDIX 1. The complete Task Force Report is available at [http://www.flsc.ca/documents/Common-Law-Degree-Report-C\(1\).pdf](http://www.flsc.ca/documents/Common-Law-Degree-Report-C(1).pdf).
4. In May 2010 a Federation working group reported to Federation Council with recommendations for the composition, mandate and reporting deadline of the Federation's Common Law Degree Implementation Committee whose task would be to develop an implementation plan for the 2009 recommendations.
5. The Federation's Implementation Committee, chaired by Tom Conway, began meeting in September 2010. It presented its final report to Federation Council in August 2011. Council approved the Report at its semi-annual meeting in September 2011. The Report is now being provided to all law societies for their individual consideration and approval.
6. In approving the establishment of the Implementation Committee law societies emphasized the importance of Law Dean representation on the Committee. The

Implementation Committee members were Tom Conway (Chair) (Law Society of Upper Canada bencher and Ontario's Council Member appointee to the Federation), John Champion (Law Society of Upper Canada bencher and Past President of the Federation), John Hunter (British Columbia's Council Member appointee to the Federation and the Federation Vice President), Catherine Walker (Nova Scotia's Council Member at the Federation), Don Thompson (Executive Director of the Law Society of Alberta), Dean Philip Bryden, (University of Alberta Faculty of Law), Dean Mayo Moran (University of Toronto Faculty of Law), and Professor Joost Blom (Professor and former Dean, University of British Columbia Faculty of Law). The staff members to the Committee were Sophia Sperdakos (Policy Counsel, Law Society of Upper Canada) and Alan Treleaven (Director of Education and Practice, Law Society of British Columbia). Deborah Wolfe, the Managing Director of the National Committee on Accreditation, participated in the meetings.

7. In its final report the Implementation Committee commented on the input it received from the legal academy in the course of its deliberations as follows:

The Committee has benefited from the invaluable assistance and input of the Council of Canadian Law Deans (the CCLD). The CCLD established a Law Deans' Working Group consisting of Dean Mary Anne Bobinski (Faculty of Law - University of British Columbia), Dean Kim Brooks (Schulich School of Law at Dalhousie) and Dean Lorne Sossin (Osgoode Hall Law School) to provide initial comments on a variety of proposals the Committee developed during the course of its analysis. This allowed for refinement of proposals and better understanding of the Deans' perspectives. The Committee also provided the CCLD with its proposal respecting the ethics and professionalism course requirement, the draft template for the annual report that Law Deans will complete and a memorandum outlining the Committee's proposals for implementation of the Task Force recommendations. The CCLD invited the Committee Chair to attend its meeting in Windsor, Ontario on May 6, 2011, which he did. The CCLD's input assisted in the refinement of the law school reporting process and annual report.

Because the Task Force's report includes a recommendation that graduates seeking to enter law society admission programs must have completed a course in ethics and professionalism at law school, the Committee invited law schools to provide input on implementation of the recommendation. An Ethics Professors' Working Group (EPWG) consisting of Adam Dodek (Faculty of Law - University of Ottawa), Jocelyn Downie

(Schulich School of Law at Dalhousie), Trevor Farrow (Osgoode Hall Law School) and John Law (Faculty of Law - University of Alberta), met with members of the Committee to provide input and assistance in the development of the recommended approach.

The diversity of perspectives among the members of the Committee, the collaborative approach of its discussions and its external consultations have assisted the development of recommendations that will facilitate the effective implementation of the national requirement. The Committee has every confidence that the productive conversations about legal education that have occurred during this process will continue in the future, in the public interest.

8. The Implementation Committee Chair's covering letter to the Federation and the Implementation Committee's Report are set out at **APPENDICES 2** and **3**, respectively.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

TASK FORCE ON THE CANADIAN COMMON LAW DEGREE

FINAL REPORT

October 2009

EXECUTIVE SUMMARY

The provincial and territorial law societies of Canada have the statutory responsibility to regulate the legal profession in the public interest. This responsibility includes the task of admitting lawyers to the profession. In all common law provinces and territories there are three requirements for admission to the bar: a Canadian law degree or its equivalent, successful completion of a bar admission or licensing program and completion of an apprenticeship known as articling. For applicants who receive their legal training outside Canada the determination of what constitutes qualifications "equivalent to" a Canadian law degree is made by the National Committee on Accreditation ("NCA"), a committee of the Federation of Law Societies of Canada ("the Federation").

Unlike other common law jurisdictions, Canada has never had a national standard for academic requirements of a Canadian law degree. The closest *de facto* standard has been a set of requirements the Law Society of Upper Canada approved in 1957 and revised in 1969. These have not been reviewed in 40 years and in any event have never been explicitly accepted by other law societies.

The regulatory landscape has changed greatly since 1969. Public scrutiny of regulated professions has increased. Recent events have converged to focus particular attention on the need for transparent regulatory processes and on the implications of government initiatives to harmonize regulatory requirements across the country:

- Three provinces have enacted legislation respecting access to regulated professions that require regulators to ensure that admission processes for domestic and internationally trained applicants are transparent, objective, impartial and fair.
- The number of internationally trained applicants for entry to bar admission programs has greatly increased and the requirement for equivalency has created a need to articulate what law societies regard as the essential features of a lawyer's academic preparation.
- New law schools are being proposed for the first time in more than 25 years and recognition of their degrees as meeting the academic requirements for entry to bar admission programs requires a more explicit statement of what is required.
- Federal and provincial governments have made clear their commitment to national labour mobility and harmonized standards. A 2007 Canadian Competition Bureau ("CCB") Study on regulated professions questioned the rationale behind the different admissions requirements of various law societies. Recent amendments to the Agreement on Internal Trade ("AIT") have made it clear that all levels of government view professions as national entities that must have the same admission standards. Anyone certified for an occupation by a regulator in one province or territory must be recognized to practise that occupation in all other provinces and territories. The legal profession has had national mobility for a number of years, beginning with the negotiation of the

National Mobility Agreement in 2002. A national academic requirement would further enhance national mobility by providing a common, transparent method for entry to any of the common law bar admission programs in Canada.

The Federation appointed this Task Force in June 2007 to review the existing academic requirements for entry to bar admission programs and to recommend any modifications that might be necessary.

The Task Force's recommendations follow this Executive Summary. The Task Force recommends that the Federation adopt a national academic requirement for entry to the bar admission programs of the common law jurisdictions. The intent behind developing a requirement that applies equally to applicants educated in Canada and internationally is to ensure that all those seeking to enter bar admission programs in Canadian common law jurisdictions have demonstrated certain essential and predefined competencies in the academic portion of their legal education.

In developing the recommended content of this national requirement the Task Force has had the benefit of input from the legal academy, the profession and other interested parties. In particular, the Council of Canadian Law Deans has been of considerable assistance as the Task Force has addressed the difficult challenge of creating a national requirement while at the same time preserving the flexibility Canadian law schools require to continue the innovation in legal education that positions graduates for valuable and diverse roles in society.

Accrediting bodies in jurisdictions similar to Canada commonly use one of two approaches to determine that an applicant for admission meets the necessary academic requirements: successful completion of specified courses or passage of a substantive law bar examination. In recent years, however, there has been increasing focus on learning outcomes, rather than prescriptive input requirements. The Task Force is of the view that this focus represents the appropriate regulatory approach.

Accordingly, the Task Force proposes a national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education.

The skills competencies the Task Force recommends are in problem solving, legal research and oral and written communication skills. These skills are fundamental to any work a lawyer undertakes in the profession.

In general the Task Force recommends that the Federation leave it to law schools to determine how their graduates accomplish the required competencies. It has concluded, however, that the Federation should require applicants seeking entry to bar admission programs to demonstrate that they have had specific instruction in ethics and professionalism, in a stand-alone course dedicated to the subject. Ethics and professionalism lie at the core of the legal profession. It is important that students begin to appreciate this early in their legal education.

In determining the required substantive legal knowledge, the Task Force considered the continued relevance of the current first-year curriculum of the 16 law schools offering a common law degree, the importance of students having foundational knowledge in both public and private law, the competency research undertaken by various law societies in Canada, the regulatory approach in other comparable common law jurisdictions and the importance of ensuring that the requirements do not interfere with the flexibility and innovation in current law school education.

The Task Force's recommendations reflect its view that every Canadian law school graduate entering a bar admission program or a recipient of an NCA Certificate of Qualification should understand,

- the foundations of law, including principles of common law and equity, the process of statutory construction and analysis and the administration of the law in Canada;
- the constitutional law of Canada that frames the legal system; and
- the principles of criminal, contract, tort, property and Canadian administrative law and legal and fiduciary principles in commercial relationships.

In addition to the competencies set out in the national requirement the Task Force recommends that law schools meet certain institutional requirements, as follows:

- The prerequisite for entry to law school must at a minimum include successful completion of two years of postsecondary education at a recognized university or CEGEP, subject to special circumstances.
- The law school's program for the study of law must consist of three academic years or its equivalent in course credits.
- The program of study must consist primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
- The law school must be adequately resourced to meet its objectives.
- The law school must have appropriate numbers of qualified academic staff to meet the needs of the academic program.
- The law school must have adequate physical resources for both faculty and students to permit effective student learning.
- The law school must have adequate information and communication technology to support its academic program.
- The law school must maintain a law library in electronic and/or paper form that permits it to foster and attain its teaching, learning and research objectives.

The national requirement will be applied to all applicants for entry to bar admission programs whether educated in Canada or internationally.

Where a Canadian law school offers an academic and professional legal education that meets the national requirement, its graduates will have met the requirements for entry to bar admission programs.

For applicants trained outside Canada the Task Force recommends that the NCA continue to assess them individually. The national requirement will provide appropriate guidance and result in NCA applicants being assessed in a manner consistent with the requirements for graduates from Canadian law schools.

The Task Force also recommends that the Federation apply the national requirement when considering proposals for new Canadian law schools.

The Task Force recommends that Canadian law school compliance with the national requirement, including the competencies, be determined by a standardized annual report. Each law school Dean will complete the report confirming that the law school has conformed to the academic program and learning resources requirements and explaining how the program of study ensures that each graduate of the law school has met the competency requirements.

If the law societies of Canada approve these recommendations, the Task Force recommends that the Federation establish a committee to implement them.

The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking to enter a bar admission program must meet the national requirement. This transition period accommodates students who have already begun their studies, applicants currently in the NCA process and law schools that will require modifications to their programs.

The proposed national requirements and the Task Force's more detailed discussion of the issues follow this Executive Summary.

THE TASK FORCE'S RECOMMENDATIONS

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

A. *Statement of Standard*

1. *Definitions*

In this standard,

- a. *"bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;*
- b. *"competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and*
- c. *"law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.*

2. *General Standard*

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. *successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or*

- b. *possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.*

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

1.2 Legal Research

The applicant must have demonstrated the ability to,

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

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- a. communicate clearly in the English or French language;*

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

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;*
- b. the ability to identify and address ethical dilemmas in a legal context;*
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*
 - i. circumstances that give rise to ethical problems;*
 - ii. the fiduciary nature of the lawyer's relationship with the client;*
 - iii. conflicts of interest;*
 - iv. duties to the administration of justice;*
 - v. duties relating to confidentiality and disclosure;*
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.*

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of

the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships.*

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic

and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. *Academic Program:*
 - 1.1 *The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*
 - 1.2 *The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.*
 - 1.3 *Holders of the degree have met the competency requirements.*
 - 1.4 *The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.*
 - 1.5 *Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*
 2. *Learning Resources:*
 - 2.1 *The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*
 - 2.2 *The law school has adequate physical resources for both faculty and students to permit effective student learning.*
 - 2.3 *The law school has adequate information and communication technology to support its academic program.*
 - 2.4 *The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*
5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the

Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.

6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.



August 10, 2011

Ronald J. MacDonald, Q.C.
President
Federation of Law Societies of Canada
45 O'Connor Street, Suite 1810
Ottawa, Ontario K1P 1A4

Re: Final Report - Common Law Degree Implementation Committee

Dear Mr. MacDonald,

As Chair of the Federation of Law Societies of Canada's Common Law Degree Implementation Committee (the "Committee"), I am pleased to provide you with the Committee's final report.

In accordance with its mandate, the Committee has developed a proposal to implement the uniform national requirement (the "national requirement") for entry to law society admission programs in Canadian common law jurisdictions. Our 20 recommendations develop a coherent implementation structure that is detailed and appropriately balanced in its effect on law schools, the National Committee on Accreditation (the "NCA"), law societies and the Canadian Common Law Program Approval Committee, the body that will determine compliance with the national requirement.

As the Federation of Law Societies of Canada (the "Federation") and its member law societies implement the national requirement there is a valuable opportunity to strengthen and advance the institutional relationship between law societies and Canadian law schools at a national level.

The Committee's process has convinced all its members that such a collaborative national dialogue is both feasible and vital to the interests of furthering law societies and the legal academy's commitment to a legal profession that is learned, competent and dedicated to the public interest.

There are a few considerations that were beyond the scope or time frame of the Implementation Committee's mandate, but the Committee wishes to identify them for the Federation as relevant to the ongoing relevance of the national requirement and the continued enhancement of the continuum of legal education.

1. Law School Learning Methodologies

The 2009 Report of the Task Force on the Canadian Common Law Degree recommends that as part of the approval process a law school's course of study must consist

“primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students”.

The Committee’s Report recommends interpreting “primarily” in-person to mean that presumptively a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.

The Committee is aware of the rapidly changing nature of educational delivery methods. As such, it has included in the text of its report the following comment:

The Committee recognizes the ongoing value of law schools developing innovative and dynamic delivery approaches. As legal education and delivery methods continue to evolve the re-examination of this requirement will be appropriate and advisable. It is beyond the scope of the Committee’s mandate to undertake such an examination, but it recommends that the Federation broaden the discussion by engaging those with expertise in education delivery techniques, delivery of legal education and professional regulation to consider the issues.

This issue is relevant not only to the Federation’s national requirement, but to the NCA’s assessment of international credentials.

2. National Collaboration on Ethics and Professionalism

In the course of the Committee’s discussions with law school representatives on the importance of ethics and professionalism to the legal profession the idea of promoting a voluntary national collaboration on ethics and professionalism among the Federation, law firms and law schools was raised. The Committee has recommended that the Approval Committee’s mandate include participating in efforts to enhance the relationship between law societies and law schools, including promoting such a voluntary collaboration on ethics and professionalism. (See Recommendation 16)

For the Federation’s information, I am setting out here the ideas that the Committee members discussed with the Ethics Professors Working Group in the course of its discussions on the ethics and professionalism course.

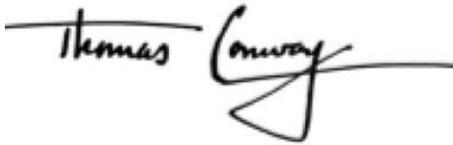
- The Federation/law societies/law firms could create a summer institute (even for a time limited period (e.g. three years)) to bring together ethics professors and representatives from law societies and law firms to discuss ethical issues and the teaching of ethics. This would go a long way to fostering relations between the Federation and the legal academy and would also encourage law schools whose teaching in this area is relatively recent to become more innovative in their approaches. Given that there is a group of ethics professors across the country that interacts regularly on issues related to teaching ethics, a summer institute would also enhance their ability to interact in person.
- Canada is hosting the International Legal Ethics Conference on July 12-14, 2012 in Banff. This might be a good opportunity for all involved to come together for professional development on issues of legal ethics.

- Law firm initiatives supporting law school teaching in this area should be encouraged. Law firm sponsorships/recognition is very important. This could also have a salutary effect on encouraging law schools to innovate in this area. Innovation could be celebrated with awards.
- Groups already in existence to support the teaching of ethics in law schools could be engaged further and efforts to find funding for initiatives like the summer institutes could be stepped up to ensure schools are represented.
- The Federation could devote the educational portion of one of its semi-annual conferences to ethics and professionalism and invite representatives who teach the subject at the law school to participate.

If the collaborative approach and the thoughtful dialogue in which our committee members engaged throughout our deliberations are any indication, I believe we may well be ushering in a renewed and productive relationship between the legal academy and the law societies of Canada in the sphere of our mutual concern, that is the education and training of the legal profession in Canada.

I wish to thank and acknowledge all of the members of our committee for their many hours of thoughtful work and, in particular, to thank each of the staff members who supported our work. My job as chair was made very easy by their collective efforts.

Thank you for the opportunity to work on this important issue.



Thomas G. Conway, Chair
Common Law Degree Implementation Committee

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Common Law Degree Implementation Committee

Final Report

August 2011

This report is presented to the Council of the Federation of Law Societies of Canada for consideration. None of the recommendations contained herein is effective unless approved by the Federation and its member law societies.

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INTRODUCTION

The Federation of Law Societies of Canada's Common Law Degree Implementation Committee (the "Committee") is pleased to provide this final report to the Council of the Federation of Law Societies of Canada (the "Federation"). In accordance with its mandate, the Committee has developed a proposal to implement the uniform national requirement (the "national requirement") for entry to law society admission programs¹ in Canadian common law jurisdictions.

The Committee's 20 recommendations develop a coherent implementation structure that is detailed and appropriately balanced in its effect on law schools, the National Committee on Accreditation (the "NCA"), law societies and the body that will determine compliance with the national requirement. The recommendations ensure that the intent of the Federation's Task Force on the Canadian Common Law Degree (the "Task Force") and the manner in which the Task Force's recommendations are to be implemented are clear to:

- law schools that will meet the national requirement and report on their programs annually;
- the compliance body;
- the NCA, which will apply the requirements to applicants seeking Certificates of Qualification;
- law societies; and
- the public.

They reflect the principle underlying the Task Force's recommendations that its report should not interfere with innovation and flexibility in Canadian law school education.

As the Federation and its member law societies implement the national requirement there is a valuable opportunity to strengthen and advance the institutional relationship between law societies and Canadian law schools at a national level. The Committee's process has convinced all its members that such a collaborative national dialogue is both feasible and vital to the interests of furthering law societies and the legal academy's commitment to a legal profession that is learned, competent and dedicated to the public interest.

¹ The term "law society admission program" refers to and includes all the pre-licensing processes, however named, of law societies in the common law provinces and territories leading to admission to the profession.

RECOMMENDATIONS

Recommendation 1

The commentary set out in **TABLE A** regarding the competency requirements be approved.

Recommendation 2

The elaboration of the professionalism and ethics competency set out in **TABLE B** be approved.

Recommendation 3

“Course” relating to ethics and professionalism instruction be interpreted to allow for both:

- a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies set out at **TABLE B**, and
- a demonstrable course of study devoted to ethics and professionalism that could be delivered:
 - (1) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies set out in **TABLE B**; and/or
 - (2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies set out in **TABLE B**.

Recommendation 4

By 2015, graduates seeking entry to law society admission programs be required to have taken a demonstrable course of study dedicated to ethics and professionalism that is a minimum of 24 hours, is formally assessed and, at a minimum, addresses the required competences set out in **TABLE B**.

Recommendation 5

The commentary and direction set out in **TABLE C** regarding the approved common law degree academic program requirements be approved.

Recommendation 6

The commentary and direction set out in **TABLE D** regarding the approved common law degree required learning resources be approved.

Recommendation 7

Law schools be entitled to comply with the national requirement by using the Program Approval Model or the Individual Student Approval Model for a given program, including joint degree programs.

Recommendation 8

A graduate from a school applying the Individual Student Approval Model to a given program be eligible for entry to law society admission programs if he or she provides an official transcript from the degree granting institution certifying that he or she has met the national requirement for entry to law society admission programs.

Recommendation 9

A graduate who has not met the national requirement who subsequently seeks entry to a law society admission program be required to obtain first a Certificate of Qualification from the NCA.

Recommendation 10

The Federation website identify whether schools apply the Program Approval Model or the Individual Student Approval Model to a given program.

Recommendation 11

The Canadian Common Law Program Approval Committee (the "Approval Committee") be authorized to make any changes, revisions or additions to the standardized annual report form set out in **Appendix 3** as it determines necessary, provided the changes, revisions or additions conform to the national requirement and reflect the purposes as described in this report.

Recommendation 12

The compliance process set out in **TABLE E** be approved.

Recommendation 13

The Approval Committee be authorized to make any changes, revisions or additions to the draft reporting timeline set out in **Appendix 4** and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.

Recommendation 14

Beginning in 2015 and annually thereafter the Approval Committee's final reports be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.

To reflect that the national requirement does not come into effect until 2015, the progress reports in 2012, 2013 and 2014 not be public.

Recommendation 15

The Federation establish a new committee to be called the Canadian Common Law Program Approval Committee.

Recommendation 16

The Approval Committee have the following mandate:

- To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.

- To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.
- To make any changes, revisions or additions to the draft reporting timeline set out in **Appendix 4** and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.
- To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.
- To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.
- To ensure appropriate training for its members.
- To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.

Recommendation 17

The Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process, the first to be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting timeline and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the timeline. Nothing in this recommendation should preclude adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate in Recommendation 16. It should be open to the Approval Committee to recommend the timing of the evaluations.

Recommendation 18

The qualifications to be represented among the members of the Approval Committee set out in **TABLE F** be approved.

Recommendation 19

The appointment process, size, member composition and term of service for the Approval Committee set out in **TABLE G** be approved.

Recommendation 20

The Approval Committee be resourced forthwith and with sufficient professional and support staff and financial resources to enable it to fulfil its mandate. Law societies, through the Federation, fund the Approval Committee.

THE REPORT

BACKGROUND

The Federation's Task Force on the Canadian Common Law Degree (the "Task Force") issued its final report in October 2009. That Report recommends that law societies in common law jurisdictions in Canada adopt a uniform national requirement for entry to their admission programs (the "national requirement"). It further recommends that by no later than 2015, and thereafter, all applicants seeking entry to a law society admission program must have met the national requirement. The Task Force report recommends that the National Committee on Accreditation (the "NCA") apply the national requirement in assessing the qualifications of individuals with legal education and experience obtained outside Canada or in civil law degree programs in Canada who wish to be admitted to a law society in a common law jurisdiction. It also recommends that the national requirement be applied in considering applications for the approval of programs of new Canadian law schools.

The national requirement specifies the required competencies that graduates must have attained and the law school academic program and learning resource requirements that law schools must have in place to enable entry of graduates to law society admission programs. It applies to the J.D. or LL.B. programs of existing law schools and to applications for recognition of new common law programs.²

The Task Force report also recommends that the Federation establish a committee to implement its report and recommendations. The Task Force recommendations are set out in **Appendix 1**.³

All law societies in Canada approved the Task Force report and recommendations between December 2009 and March 2010. The Federation's model resolution, which law societies adapted to their individual use, contained a provision that the appointed

² "New common law programs" could include both those that are developed within a university setting and those that are not. "New common law programs" also includes those relating to a yet to be established Canadian law school and proposed new programs in established Canadian schools, including civil law schools proposing to establish common law programs.

³ The Task Force report is available at www.flsc.ca/_documents/Common-Law-Degree-Report-C.pdf.

implementation committee include appropriate representation from Canadian law schools.

In May 2010, a Federation working group reported to Federation Council with recommendations for the composition, mandate and reporting deadline of the Federation's Common Law Degree Implementation Committee (the Committee). Council approved the Working Group report, which is set out at **Appendix 2**. The Working Group report reflects the importance law societies place on including law school representatives on the Committee. It specifies two Law Deans as members. In addition, another member of the Committee is a law professor who is also a former law school Dean.

The members of the Committee are: Tom Conway (Chair), Professor Joost Blom, Dean Philip Bryden, John Champion, John Hunter, Dean Mayo Moran, Don Thompson, and Catherine Walker. The Managing Director of the NCA, Deborah Wolfe, also attended and participated in the meetings, as recommended in the Working Group report. Sophia Sperdakos and Alan Treleaven are staff to the Committee.

The Committee's mandate is

- (a) to determine how compliance with Section C (Approved Canadian Law Degree)⁴ of the recommendations of the Task Force on the Canadian Common Law Degree will be measured. Its mandate may include clarifying or elaborating on the recommendations, where appropriate, to ensure their effective implementation, but will not include altering the substance or purpose of them; and
- (b) to make recommendations as to the establishment of a monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining the Federation of Law Societies of Canada's ("the Federation") relationship with Canadian law schools. The Implementation Committee should consider any role the National Committee on Accreditation might play in that monitoring process.

This report fulfills the Committee's responsibility to present its final report to Federation Council no later than September 2011. In accordance with its mandate, the Committee has made recommendations on implementation and on the establishment of a "compliance body." The report discusses the nature, structure and composition of that body with

⁴ Section C incorporates, by reference, the recommendations in Sections A and B. See Appendix 1.

a formal recommendation (Recommendation 15) that it be established and called the Canadian Common Law Program Approval Committee (the Approval Committee).⁵

Where appropriate, the Committee has clarified or elaborated on the Task Force recommendations to ensure their effective implementation, but has not altered the substance or purpose of them.

The Committee's goal has been to ensure that:

- the intent of the Task Force recommendations and the manner in which they are to be implemented are clear to:
 - o law schools that will meet the national requirement and report on their programs annually,
 - o the Approval Committee,
 - o the NCA, which will apply the requirements to applicants seeking Certificates of Qualification,
 - o law societies, and
 - o the public;
- the implementation structure is clear, effective and appropriately balanced in its effect on law schools, law societies, the NCA and the Approval Committee;
- the implementation approach reflects the principle underlying the Task Force's recommendations that its report should not interfere with innovation and flexibility in law school education; and
- the approach to implementation was developed following consultation with and input from law schools, beyond membership of two Law Deans and a former Law Dean on the Committee.

The Committee has benefited from the invaluable assistance and input of the Council of Canadian Law Deans (the CCLD). The CCLD established a Law Deans' Working Group consisting of Dean Mary Anne Bobinski (Faculty of Law - University of British Columbia), Dean Kim Brooks (Schulich School of Law at Dalhousie) and Dean Lorne Sossin (Osgoode Hall Law School) to provide initial comments on a variety of proposals the Committee developed during the course of its analysis. This allowed for refinement of proposals and

⁵ See Recommendations 15 – 20 and discussion beginning at page 39.

better understanding of the Deans' perspectives. The Committee also provided the CCLD with its proposal respecting the ethics and professionalism course requirement, the draft template for the annual report that Law Deans will complete and a memorandum outlining the Committee's proposals for implementation of the Task Force recommendations. The CCLD invited the Committee Chair to attend its meeting in Windsor, Ontario on May 6, 2011, which he did. The CCLD's input assisted in the refinement of the law school reporting process and annual report.

Because the Task Force's report includes a recommendation that graduates seeking to enter law society admission programs must have completed a course in ethics and professionalism at law school, the Committee invited law schools to provide input on implementation of the recommendation. An Ethics Professors' Working Group (EPWG) consisting of Adam Dodek (Faculty of Law - University of Ottawa), Jocelyn Downie (Schulich School of Law at Dalhousie), Trevor Farrow (Osgoode Hall Law School) and John Law (Faculty of Law - University of Alberta)⁶, met with members of the Committee to provide input and assistance in the development of the recommended approach.

The diversity of perspectives among the members of the Committee, the collaborative approach of its discussions and its external consultations have assisted the development of recommendations that will facilitate the effective implementation of the national requirement. The Committee has every confidence that the productive conversations about legal education that have occurred during this process will continue in the future, in the public interest.

THE COMPETENCIES

The approved Task Force recommendations specify minimum competencies for entry to law society admission programs.⁷ With the exception of the competency respecting "ethics and professionalism," which must be satisfied in "a course dedicated to those subjects and addressing the required competencies," each law school may determine how its students

⁶ The EPWG has acted as a liaison to the larger group of ethics and professionalism professors across the country.

⁷ See Section B of Appendix 1.

satisfy the competency requirements. As the Task Force notes, “this allows law schools the flexibility to address these competencies in the manner that best meets their academic objectives, while at the same time meeting the regulators’ requirements that will allow their graduates to enter law society admission programs.”⁸

The required competencies are part of “an academic and professional legal education that will prepare the student for entry to a law society admission program.” Law schools comply with specified requirements respecting the academic program and learning resources.

The requirements leave significant additional freedom within law school curricula and structure for students to develop their particular interests and for law schools to pursue innovative teaching and research.

In examining the competencies, the Committee’s goal has been:

- to determine whether any of the competencies requires clarification or elaboration to facilitate implementation and compliance; and
- to provide such direction in this regard as is necessary.

While the Committee is satisfied that the competencies are generally clear and do not require clarification, it has identified some instances where clarification or elaboration would be useful not only to law schools whose students must meet them, but also to the NCA, which must assess the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada.

The Committee has also determined a number of instances where examples of how a competency could be satisfied would be useful and has included these. The Committee emphasizes that these are examples only and do not limit or circumscribe a law school’s ability to determine how its students satisfy the competency.

⁸ Task Force Report, p. 31.

For ease of understanding, the Task Force’s competency requirements are set out in **TABLE A**, with the Committee’s recommendations for clarification, elaboration or direction set out in an accompanying box. The ethics and professionalism competency is dealt with separately following the Table.

TABLE A
Competency Requirements

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

- *identify relevant facts;*
- *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*
- *analyze the results of research;*
- *apply the law to the facts; and*
- *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*

No clarification necessary.

1.2 Legal Research

The applicant must have demonstrated the ability to,

- *identify legal issues;*
- *select sources and methods and conduct legal research relevant to Canadian law;*

Given that the skills addressed in this competency relate to legal research, the reference to “Canadian law” should be read in that context. It should not be seen as referring to substantive Canadian law, but rather to the types of legal

research resources that reflect the Canadian context (e.g. precedent-based research). This is relevant to the assessment of the qualifications of individuals with legal education and professional experience obtained outside of Canada or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada and is also applicable to those educated in common law Canadian law schools.

- *use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;*
- *identify, interpret and apply results of research; and*
- *effectively communicate the results of research.*

No clarification necessary.

1.3 *Oral and Written Legal Communication*

The applicant must have demonstrated the ability to,

- *communicate clearly in the English or French language;*
- *identify the purpose of the proposed communication;*
- *use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- *effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.*

No clarification necessary.

2. *Ethics and Professionalism*

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. *the duty to communicate with civility;*
- b. *the ability to identify and address ethical dilemmas in a legal context;*
- c. *familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*

- i. *circumstances that give rise to ethical problems;*
- ii. *the fiduciary nature of the lawyer's relationship with the client;*
- iii. *conflicts of interest;*
- iv. *duties to the administration of justice;*
- v. *duties relating to confidentiality and disclosure;*
- vi. *an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
- vii. *the importance and value of serving and promoting the public interest in the administration of justice.*

Discussed separately below.

3. *Substantive Legal Knowledge*

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge.

The Task Force recommendations specify minimum competencies required for entry to law society admission programs. The Task Force report recognizes that legal education in Canada is an enriched learning environment and agrees that it provides both a liberal legal education and a professional education. In law school students begin to “think like lawyers,” examine law critically and address deficiencies in legal systems and principles. The competencies that are included in the national requirement are therefore situated in this broader context.

This preamble to the section 3 competencies seeks Deans’ descriptions of how their school offers “a sufficiently comprehensive program of study” to enable graduates to “obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge.” Each Dean will be asked to address this in the annual report to the Approval Committee.

In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- *principles of common law and equity;*

This competency could be addressed as part of courses in private law. It is open to schools to address this competency in other ways.

- *the process of statutory construction and analysis; and*

This competency could be addressed by any number of courses that are statute based (e.g. taxation, corporate, administrative, criminal, civil procedure, family, labour, etc.). It is open to schools to address this competency in other ways.

- *the administration of the law in Canada.*

This competency is directed at understanding the organization of the courts and tribunals **in Canada**, including appeal processes.

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

The modifier “core” before “principles” is unnecessary and will not appear on the annual report to the Approval Committee law schools complete.

This section 3.2 requirement is fully addressed by the enumerated competencies below. All competencies under section 3.2 are intended to address public law **in Canada**.

- *the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*

The part of this competency requirement that states “the constitutional law of Canada, including...the rights of Aboriginal peoples of Canada” could be addressed in a number of ways, including, for example, in a constitutional law

course or as part of a property law course that addresses Aboriginal rights. It is open to schools to address this competency in other ways.

- *Canadian criminal law; and*

No clarification necessary.

- *the principles of Canadian administrative law.*

This competency contemplates the principles of **Canadian** administrative law. This competency could be addressed through a stand-alone administrative law course or through a course in which the subject matter is grounded in an administrative tribunal (e.g. labour/employment law, environmental law). It is open to schools to address this competency in other ways.

3.3 *Private Law Principles*

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

The modifier “foundational legal” before “principles” is unnecessary and will not appear on the annual report to the Approval Committee law schools complete.

- *contracts, torts and property law; and*

No clarification necessary.

- *legal and fiduciary concepts in commercial relationships.*

This competency contemplates a conceptual overview of business organizations, including fiduciary relationships in a commercial context. It is open to schools to address this competency through a course in corporate law or in other ways.

Recommendation 1

The commentary set out in TABLE A regarding the competency requirements be approved.

Ethics and Professionalism Competency

The Task Force report places particular emphasis on the need for law school graduates who seek entry to law society admission programs to have an understanding of ethics and professionalism. It notes,

Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures. Increasing evidence of external scrutiny of the profession in this area and internal professional debates about ethical failures point to the need for each lawyer to understand and reflect on the issues. In the Task Force's view, the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better.

The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues. To ensure that law students receive this early, directed exposure the Task Force believes a stand-alone course is essential.⁹

In addition to setting out the components of the ethics and professionalism competency, the Task Force report recommends that this competency be acquired in a course dedicated to the subject and addressing the competencies. This is in contrast to the approach to all the other competencies in the national requirement in which the report recommends that it be left to law schools to determine how their students meet them. As the Task Force indicates, "ethics and professionalism lie at the core of the profession."

The unique approach the Task Force takes to this competency led the Committee to consult, as described above in the 'background' section to this report, to ensure that the Task Force's recommendations respecting ethics and professionalism are implemented as effectively as possible, in keeping with both the spirit and letter of the recommendations.

⁹ Task Force Report, p.35.

The Committee received invaluable input and assistance respecting both the implementation of the stand alone course requirement, which will be discussed later in this report, and on the language of the ethics and professionalism competency, which is discussed here.

In the course of its consultations the following points were drawn to the Committee's attention:

- The way in which the actual competency is stated in the Task Force report is more narrowly focused than the rest of the Task Force report on the topic appears to have intended. This is because the components of the competency, as originally worded, focus mainly on issues addressed in Rules of Professional Conduct, rather than also reflecting the greater Task Force goal that students understand and reflect on broader ethical and professionalism issues.
- Presenting the competencies as a "list" of components could have the unintended effect of freezing curricula at a point in time. Making it clear that the list is not exhaustive would minimize the concern.
- The Task Force's intent to recognize the importance of ethics and professionalism would be more effectively addressed if the implementation approach more accurately reflects that intent.

The Committee agrees with these points. While maintaining all the components of the ethics and professionalism competency set out in the Task Force's report, the Committee has added additional language that reflects the broader philosophy underlying the Task Force's reasons for placing special emphasis on professionalism and ethics in its report.

The ethics and professionalism competency described below is the point of departure for those who teach this subject. Its components do not constitute an exhaustive list that limits them to teaching only those components. It sets out the required minimum coverage only.

The proposed wording for the ethics and professionalism competency is set out in

TABLE B.

TABLE B
Ethics and Professionalism Competency

Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,

1. Knowledge of,
 - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,
 1. circumstances that give rise to ethical problems;
 2. the fiduciary nature of the lawyer's relationship with the client;
 3. conflicts of interest;
 4. the administration of justice;
 5. duties relating to confidentiality, lawyer-client privilege and disclosure;
 6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and
 7. the importance and value of serving and promoting the public interest in the administration of justice;
 - b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
 - c. the range of legal responses to unethical conduct and professional incompetence; and
 - d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.
2. Skills to,
 - a. identify and make informed and reasoned decisions about ethical problems in practice; and
 - b. identify and engage in critical thinking about ethical issues in legal practice.

For the NCA's assistance in assessing the competencies of international students, the Committee makes one additional comment on the ethics and professionalism competency. The reference to "Canada" in the competency's preamble and in section 1(a) reflects the requirement that the graduate must have acquired the competency in a course of study that addresses the subject in the Canadian context. Presently, there is no requirement that NCA candidates satisfy this competency in the Canadian context. The Canadian context requirement will mean that in future more NCA candidates may be required to meet this competency than is currently the case. Given the Task Force's emphasis on the importance of this topic in its Canadian context, the Committee is of the view that the applicability of the competency in the NCA context is in the public interest and therefore appropriate.

For Canadian law schools that have previously allowed students to obtain a compulsory ethics credit during an international exchange program by taking an ethics course that addresses ethics in the law of the country governing the exchange program, such a credit would not be eligible for the ethics and professionalism competency.

Recommendation 2

The elaboration of the professionalism and ethics competency set out in TABLE B be approved.

APPROVED COMMON LAW DEGREE - ACADEMIC PROGRAM AND LEARNING RESOURCES

The Task Force report specifies that for graduates of a Canadian law school to be eligible to enter a law society admission program their school must offer an academic program and learning resources that comply with the national requirement.

The Task Force specifically avoids an overly prescriptive approach to the academic program, reflecting its underlying philosophy that law schools should be able to pursue an innovative and flexible pedagogical approach, in keeping with the goals and objectives of their individual programs, subject only to meeting certain minimum requirements for the purposes of entry of their graduates to law society admission programs.

The Task Force report states that,

wherever possible the institutional requirements set out in the national requirement for entry to law society admission programs should reflect current practice in Canadian law schools. This balances the regulatory objectives with law schools' desire to maintain flexibility of approach. By stating current practices as much as possible the Task Force leaves open the door for law schools to advise the Federation if current practices are no longer appropriate.¹⁰

The Committee has examined the Task Force's required components of the academic program and the learning resources and determined whether any of them require comment, clarification or elaboration to facilitate implementation.

For ease of understanding, the required components of the academic program are set out in **TABLE C** with the Committee's clarification, elaboration or direction set out in an accompanying box.

TABLE C Academic Program

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. *Academic Program*

- 1.1 *The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*

The Committee provides three comments here for clarification and direction, based upon and following the Task Force's own approach.

1. In specifying "three academic years" the Task Force is referring to three full-time academic years. The Committee is advised that in law schools currently offering the common law degree the "equivalent in course credits" to three

¹⁰

Task Force Report, p. 39.

full-time academic years presumptively means 90 credit hours. The Task Force refers to this in its report.

The Committee adopts this clarification so that paragraph 1.1 of the Task Force recommendation should be clarified to read:

- 1.1 The law school's academic program for study of law consists of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.
2. Many Canadian law schools offer joint degree programs in which students follow an integrated course of study with another related discipline, receiving a J.D. or LL.B. degree plus a degree from the other discipline. The typical joint degree program is four years, although some are three years. The Task Force discusses the joint degree in relation to the requirement set out in section 1.1 above:

In recent decades many Canadian law schools have introduced joint degree programs with related, but separate disciplines. The Task Force recognizes that interdisciplinary education is a rich and valuable part of law school education. Nothing in its recommendations should be interpreted to interfere with the capacity of law schools to offer such degrees. So long as the student has been engaged in a study of law for three years or its equivalent in course credits, and has acquired the competency requirements in so doing, joint degree programs should satisfy the national requirement. Law schools introducing major changes in their academic program, such as the introduction of a joint degree, should be encouraged to discuss them with the Federation to ensure that their graduates will continue to meet the competency requirements.¹¹

For graduates of joint law degree programs to be eligible to enter law society admission programs their degrees will have to meet the national requirement, which includes, among other components, the required competencies and a requirement that the graduate of the joint degree program has followed an academic program for the study of law consisting of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.

The term “an academic program for the study of law” is broad enough to encompass joint degree programs **provided that** the study of law is integrated with another discipline sufficiently related to law **and** the interwoven content is specifically designed to enhance and enrich the learning in law. The eligibility of the joint degree program to satisfy the national requirement may be easier to accomplish in a four-year joint degree than in a three-year one, particularly in view of the need to satisfy the required competencies, but it will be open to schools that wish to have their

¹¹ Task Force Report, p. 41.

joint degree programs meet the national requirement for purposes of entry of their graduates to law society admission programs to satisfy the Approval Committee that they do.

Schools will report annually on each joint degree program for which they seek approval for the purposes of entry of their graduates to law society admission programs. It is important to note that schools may choose to offer some joint degree programs for which they do not seek approval. The Federation website will list only those programs for which approval has been obtained.

3. Some Canadian law schools accept transfer students from law schools outside of Canada. Each school determines whether transfer students will be entitled to apply any of their credits from their education outside Canada toward the degree requirements of the Canadian law school. With the introduction of the competency requirements, some of which address the competency in the Canadian context (e.g. principles of Canadian administrative law) schools will need to ensure that any credits for courses taken outside of Canada toward a competency requirement that must address the subject in the Canadian context actually do so. Schools will also need to ensure that graduates of their programs who take part of their program at another institution, either through an exchange or letter of permission, meet the national requirement.

1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

Currently, Canadian law schools deliver most education through face-to-face instruction conducted with the instructor and students in the same classroom. At the same time, most Canadian law schools now supplement that face-to-face instruction to at least some extent by the use of a variety of instructional methods mediated by information technology. These methods can include electronic course management systems such as TWEN or Moodle or synchronous instruction via video-conference. Nevertheless, it is still the case that asynchronous on-line learning or traditional distance education is rarely employed in Canadian law school courses as the sole instructional method.

In its report, the Task Force recognizes that technology is having a significant impact on the delivery of legal information and legal education, and that innovation and experimentation are to be expected and encouraged. At the same time its recommendation focuses on the importance of face-to-face inter-personal connections in law school. Its report notes,

Technological advances for delivering information are moving rapidly. The Task Force does not wish to inhibit innovative delivery or experimentation

in this area. At the same time, however, it is of the view that Canadian law school education should, as it does today, provide a primarily in-person educational experience and/or one in which there is direct interaction between instructor and students. The use of the term "primarily" in the Task Force's recommendation is intended to allow for innovation and experimentation.¹²

From the Task Force's perspective, the in-person learning requirement is directed at the skills and abilities that graduates who seek entry to a law society admission program should have. The practice of law is an interpersonal endeavour. Problems are solved through interactions with others: clients, lawyers, witnesses, office staff, judges, and others. Some of these interactions may be written, but many of them are oral, and involve understanding how to deal with a person face-to-face. In particular, lawyers typically discuss legal problems with other lawyers. They need to understand how to do that. Those interactions involve legal problem solving and oral persuasion. The law school experience – involving face-to-face interactions with instructors as well as students – models that experience.

The Committee is satisfied that the Task Force's recommendation means that currently Canadian law schools are to deliver their programs mainly through in-person delivery methods. The clause "instruction and learning that involves direct interaction between instructor and students" modifies "in-person." This clause was inserted to address and permit some synchronous learning such as live videoconferencing, which is already being used to supplement the face-to-face in-person instruction that makes up most of law school education in Canada.

In the Committee's view the Task Force's reference to "primarily" in-person instruction should be considered in the context of:

- existing practices respecting face-to-face instruction in Canadian law schools;
- the extent to which some degree of alternative delivery is currently permitted; and
- the importance of allowing room for innovation in delivery approaches.

Given this context, the Committee recommends interpreting "primarily" in-person to mean that presumptively a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.

The Committee recognizes the ongoing value of law schools developing innovative and dynamic delivery approaches. As legal education and delivery

¹² Task Force report, p. 41.

methods continue to evolve the re-examination of this requirement will be appropriate and advisable. It is beyond the scope of the Committee's mandate to undertake such an examination, but it recommends that the Federation broaden the discussion by engaging those with expertise in education delivery techniques, delivery of legal education and professional regulation to consider the issues.

1.3 Holders of the degree have met the competency requirements.

This refers to the competency requirements set out in section B of the Task Force recommendations as clarified in this report, particularly in **TABLES A** and **B**.

1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.

The Task Force report emphasizes the importance of dedicated instruction in ethics and professionalism, beginning in law school. Although for all other competencies the Task Force recommends that it be left to law schools to determine how their students meet them, it specifies that respecting ethics and professionalism students must have acquired the competencies in "a course dedicated to those subjects and addressing the required competencies" defined in the Task Force report.

TABLE B reflects the clarification and elaboration of the ethics and professionalism competency that the Committee recommends.

As a further part of its mandate to implement the Task Force recommendations the Committee is clarifying what will satisfy the requirement for an ethics and professionalism "course." This is essential to effective implementation of the requirement so that:

- those who teach this subject matter understand the parameters of the requirement;
- Law Deans are in a position to address any resource implications and are able to report compliance;
- the Approval Committee is able to determine compliance; and
- the NCA is able to assess the qualifications of individuals with legal education and experience obtained outside Canada or in civil law degree programs in Canada who wish to be admitted to a law society in a common law jurisdiction in Canada.

The substantive goal of the Task Force recommendation is that serious attention be paid to ethics and professionalism in a way that is demonstrable and dedicated. At the same time it does not intend the language of the requirement to hamstring or interfere with innovative delivery. Indeed, from the Task Force's perspective, which the Committee echoes, the innovation in teaching that has been growing in a number of schools is to be encouraged.

Drawing on the valuable consultations it has had on this subject, the Committee is clarifying the recommendation in a manner that reflects the importance of the subject and the Federation's requirements, while allowing law schools to be innovative. Having considered the input it received and reflecting on the context of the Task Force's goals and recommendations on this subject, the Committee is of the view that to allow the best development of teaching in this area, the term "course" should be interpreted to mean "a demonstrable course of study" whose goal is to develop in students the ability to think about and analyze ethical and professionalism issues in the legal profession. The approved competencies would be taught as part of the demonstrable course of study, allowing freedom to go beyond those competencies to address additional content.

The "course of study" could be developed in any number of ways, for example as a single course or within an ethics curriculum taught over a number of years as units demonstrably devoted to ethics, but situated within other courses. The learning could build on the previous year's unit reflecting the increasing sophistication of the student over time.

The "demonstrable" language is meant to ensure that the dedicated approach to ethics education that the Task Force identifies as a priority can be measured.

Recommendation 3

"Course" relating to ethics and professionalism instruction be interpreted to allow for both:

- ***a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies set out in TABLE B, and***
- ***a demonstrable course of study devoted to ethics and professionalism that could be delivered,***

(1) within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies set out in TABLE B; and/or

(2) in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies set out in TABLE B.

While there are various criteria that could be applied to determine whether a school has met the requirement for a demonstrable course of study, the Committee is reluctant to be overly prescriptive, particularly since the Federation requirement for a “course” in this subject area is a new direction.

Accordingly, the Committee has concluded that articulating a minimum number of required hours would allow for certainty, while leaving significant freedom for schools in developing the course of study.

The Committee discussed 36 hours as the appropriate number of hours for the “course” requirement. Because, however, the ethics and professionalism course requirement is a new one that may have resource and staffing implications for some schools it is of the view that there should be some flexibility respecting this component.

The Committee recommends that the requirement be satisfied if a graduate has taken a “course” (as described above) that is a minimum of 24 hours. The Committee is also of the view, however, that the ultimate goal is for the requirement to be 36 hours, the implementation of this goal to be determined at a future date to be discussed with the law schools before actually being implemented.

As discussed, the required 24 hours could be acquired in a single course or in a course of study that spans two or three years of law school (e.g. 12 hours a year for 2 years, 8 hours a year over three years) or any other way the law school determines provided it satisfies the requirement for a “demonstrable course of study.”

Recommendation 4

By 2015, graduates seeking entry to law society admission programs be required to have taken a demonstrable course of study dedicated to ethics and professionalism that is a minimum of 24 hours, is formally assessed and, at a minimum, addresses the required competences set out in TABLE B.

1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.

No clarification necessary.

Recommendation 5

The commentary and direction set out in TABLE C regarding the approved common law degree academic program requirements be approved.

Learning Resources

In developing its recommendations respecting learning resources the Task Force notes the following:

The Task Force is reluctant to define in great detail the form law school must take, particularly given the role of provincial governments in approving degree granting institutions and the complex university-based decision making process that addresses many of the law schools' physical components. The Task Force does, however, recognize that there are certain necessities for an effective legal education whose graduates can serve the public. In the Task Force's view the most important consideration is that the law school be adequately resourced to fulfill its educational mission. At a time when all public resources are subject to financial pressures, the Task Force is reluctant to be too prescriptive in its recommendations, but has concluded that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved.¹³

An environment that supports learning is critical to the development of meaningful legal education. It may be easier to assess what is sufficient with respect to already established schools than with respect to new applicants for program recognition. At the same time, it is not appropriate to set a standard based on the resources that long-established schools have that would be impossible for a new school to meet.

It is necessary to provide additional guidance under "learning resources" to assist law schools to know what information they are expected to report on an annual basis. This will ensure consistency of information across schools and across years.

The Committee agrees with the Task Force's approach to resources that recognizes a connection between the resource requirements and a school's particular objectives. This allows for different types of law schools to exist that require different levels of resources. At the same time, however, the school's objectives and resources must be sufficient to meet the national requirement.

¹³ Task Force Report. p.42.

The Committee has consulted with the CCLD concerning the type of information that would elicit a reasonable picture of the learning resources to which the Task Force recommendations are directed. In addition, it has considered the approaches that other professional regulators take on this issue. Its goal is that law schools provide sufficient information to allow the Approval Committee to understand the learning resources context within which the national requirement is being met in each school.

To ensure that the information sought from law schools is both relevant and necessary it would be useful to use an iterative process to develop and refine the information to be provided under the learning resources section of the annual report. As the national requirement will not come into effect until 2015, the reports that law schools will file in 2012, 2013 and 2014 will be progress reports. The Committee considers these years as providing the opportunity for law schools and the Approval Committee to review the initial approach to the learning resources reporting and develop a standardized approach that will provide the most appropriate information and be applied as consistently as possible to all degree programs, whether established or new.

The guidance set out is intended for the responses in the 2012 report. Thereafter the Approval Committee should have the authority to adapt and change the required information as it considers appropriate flowing from the iterative approach.

For ease of understanding the required components of the learning resources are set out in **TABLE D** with the Committee's clarification, elaboration or direction set out in an accompanying box.

TABLE D Learning Resources

- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

The Committee recommends that the following information be provided in this section:

- General description of numbers of full-time faculty, contract instructors, sessional lecturers and support staff, including significant changes from previous year.
- General description of full-time faculty, contract instructor and sessional lecturer qualifications.
- Number of full-time equivalent students in each program.
- General description of student support services.
- Overview of law school operating budget for the academic program from all sources, and sources of funding.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

The Committee recommends that the following information be provided in this section:

- Overall description of law school space, including whether the space is adequate for the law program(s), any space challenges faced by the school and their impact on the program and proposed or planned solutions.
- Description of space available to the law school to carry out the academic program offered, including seminar rooms, quiet study space for students, etc
- Description of accessibility of the current space.

2.3 The law school has adequate information and communication technology to support its academic program.

The Committee recommends that the following information be provided in this section:

- Description of what IT services are provided at the law school.
- Description of dedicated or shared staff and level of support provided to faculty, staff and students.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

(A useful reference for this requirement is the Canadian Academic Law Library Directors Association's standards.)

The Implementation Committee recommends that the following information be provided in this section:

- Overview of library staff complement, qualifications and reporting structure.
- Overview of library facilities and description of collection and collections policies.
- Overview of library acquisitions budget.
- General description of support services available to faculty, students and other library users.

Recommendation 6

The commentary and direction set out in TABLE D regarding the approved common law degree required learning resources be approved.

MEASURING COMPLIANCE

In considering an appropriate national compliance mechanism the Task Force states:

The requirement for a national compliance mechanism does not... necessitate an intrusive or onerous approach. Existing Canadian law schools offer a high standard of education and the Task Force is satisfied that compliance with the competency requirements will not pose difficulty for any of them. At the same time, however, the Task Force does recognize that the creation of requirements represents a change in current practices and any compliance mechanism, however modest, will require some adjustment. It also recognizes that the recommendation for a stand-alone course relating to ethics and professionalism and the requirements to address competencies may require adjustment by some law schools.

The Task Force recommends that the compliance mechanism for law schools should be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function.

In the annual report the Dean would confirm that the law school has conformed to the academic program and the learning resources requirements and would explain how the program of study ensures that each graduate of the law school has met the competency requirements.¹⁴

¹⁴ Task Force Report, pp. 43-44.

Among other tasks the Task Force report recommends this Committee undertake are the development of “the form and substance of the standardized annual law school report” and a mechanism to address non-compliance.

In developing its recommendations for the compliance mechanism the Committee has been guided by the Task Force’s views and has addressed the following issues:

- Compliance Models
- Form and Content of the Standardized Annual Report
- Compliance Process
- Publication of the reports

COMPLIANCE MODELS

The Committee recommends that law schools be entitled to approach compliance using two possible models:

- Program Approval Model
- Individual Student Approval Model

Program Approval Model

Law schools in Canada offer a variety of programs, including the traditional three full-time academic years or equivalent in course credits (presumptively 90 credits) J.D. or LL.B. program and joint degree programs, discussed above.¹⁵

A law school that applies the Program Approval Model to a particular program will require that each graduate of that program meet the national requirement for entry to law society admission programs. These law schools will not permit students in these programs to have the option to graduate without having met the competency requirements.

In the annual report on these programs the Dean will describe the process the school follows to determine that graduates in each of these programs meet the competency

¹⁵ Law schools also offer LL.M. programs that are not relevant to the discussion here.

requirements, in accordance with the national requirement.¹⁶

In schools that apply the Program Approval Model to a given program, graduates from approved programs will by definition have met the competency requirements. In granting the degree the school will be confirming this.

Schools that apply the Program Approval Model, generally, may also have joint degree programs for which they do not seek approval. The Individual Student Approval Model may be relevant to these programs. The Federation website will list all the joint degree programs for which these schools have program approval.

Individual Student Approval Model

Traditionally, there are law school graduates who choose not to be licensed to practise law. There are myriad career paths for which a J.D. or LL.B. degree is invaluable, but for which a license to practise is unnecessary. Although the required competencies in the national requirement have been designed to allow for ample additional opportunity for students to pursue their academic and intellectual interests in law school, it is possible that some students who do not want to be licensed to practise law would prefer not to satisfy all the required competencies. The Individual Student Approval Model will allow for this approach.

The Committee respects law schools' right to foster this academic path for their students, which may be in keeping with the school's objectives and mandate. Its only concern is that law societies be in a position to easily verify whether graduates from those programs, who do seek entry to law society admission programs, have met the required competencies.

If a school chooses the Program Approval Model for a given program, by definition every student granted a J.D. or LL.B. degree in an approved program will have met the competencies. If a school chooses the Individual Student Approval Model for a given program it will be necessary for individual transcripts for each graduate to indicate whether

¹⁶ As part of their existing internal processes law schools already conduct a "degree audit" for each student to ensure he or she has met all the program requirements necessary to graduate, including having met the school's required number of credit hours and fulfilled its compulsory courses or other requirements. Where a school is following the Program Approval Model for a given program, this degree audit process will also include a determination that each student will have met the Federation's competency requirements upon graduation.

he or she has met the national requirement.

A graduate who has not met the national requirement and subsequently wishes to enter a law society admission program can fulfill the missing competencies through the NCA by obtaining a Certificate of Qualification. It will be necessary for that graduate to provide the NCA with an official document from its degree granting institution setting out which competencies must still be fulfilled.

Recommendation 7

Law schools be entitled to comply with the national requirement by using the Program Approval Model or the Individual Student Approval Model for a given program, including joint degree programs.

Recommendation 8

A graduate from a school applying the Individual Student Approval Model to a given program be eligible for entry to law society admission programs if he or she provides an official transcript from the degree granting institution certifying that he or she has met the national requirement for entry to law society admission programs.

Recommendation 9

A graduate who has not met the national requirement who subsequently seeks entry to a law society admission program be required to obtain first a Certificate of Qualification from the NCA.

Recommendation 10

The Federation website identify whether schools apply the Program Approval Model or the Individual Student Approval Model to a given program.

FORM AND CONTENT OF THE STANDARDIZED ANNUAL REPORT

The standardized annual report is the mechanism by which a law school will report compliance with the national requirement.

A standardized annual report:

- provides a template by which the Approval Committee will determine compliance with the national requirement;
- addresses each of the components of the national requirement with sufficient information and supporting documentation to allow compliance to be determined;
- enables a law school to report compliance in a transparent and efficient way;
- identifies the degree programs for which a school seeks approval for entry of graduates to law society admission programs and demonstrates how each program meets the requirements;
- identifies law school programs as following the Program Approval Model or the Individual Student Approval Model;
- provides overview information on the law school to situate the report in the context of the school's objectives and approach;
- documents changes to individual law school programs. Each year each law school report will comment on changes to any previously approved programs and the effective date of such changes. With annual reporting it will be essential that any changes to previously approved programs are identified and also approved. Schools will be encouraged to discuss proposed changes with the Approval Committee before they are implemented to ensure they will meet the national requirement; and
- documents the application of the national requirement.

The Committee has developed a draft form for the standardized annual report that addresses these purposes. The draft form, which was provided to the CCLD, is set out at

Appendix 3.

The draft form is a living document that will evolve over the years as law schools and the Approval Committee seek to ensure its continued relevance and effectiveness. The Approval Committee should be authorized to make any changes, revisions or additions to the form as it determines necessary so long as the changes, revisions or additions conform to the approved national requirement and reflect the purposes described above.

Recommendation 11

The Canadian Common Law Program Approval Committee (the Approval Committee) be authorized to make any changes, revisions or additions to the standardized annual report form set out in Appendix 3 as it determines necessary, provided the changes, revisions or additions conform to the national requirement and reflect the purposes as described in this report.

COMPLIANCE PROCESS

a) Existing Canadian Common Law Programs

The national requirement applies to graduates from Canadian common law schools beginning in 2015 and annually thereafter.

Programs whose students graduate in 2012, 2013 and 2014 will continue to be recognized under the current processes and are not subject to the national requirement. Law societies will continue to accept 2012, 2013 and 2014 Canadian common law school graduates into their admissions programs on the pre-national requirement criteria.

The annual report on their programs that law schools file in 2012, 2013 and 2014, will, therefore, be progress reports leading to determination of compliance in 2015. Reports submitted in 2012, 2013 and 2014 will describe the program actually followed by the students to the date of the report, as well as reporting on plans for the program to 2015 directed at meeting the national requirement. The Approval Committee will provide feedback to schools on their progress towards meeting the national requirement for 2015.

From 2015 and annually thereafter the annual reports will report on the program the graduates of that year will have completed. The Approval Committee will determine compliance with the national requirement.

It is expected that, typically, a program approved for graduates of 2015 will continue to be approved thereafter, unless there are significant changes to the program in the areas subject to the national requirement. In such cases, the Approval Committee will undertake the inquiry necessary to ensure that the program continues to meet the national requirement.

b) New Canadian Common Law Programs

Where a new program is being proposed, either by an established Canadian law school that already offers J.D. /LL.B. programs and wishes to add additional programs or by a Canadian institution that does not yet offer any J.D. /LL.B. programs but seeks to do so,¹⁷ the school will go through a two stage process. The first stage is the consideration of the proposal for a new program. That proposal will include a plan for implementing the new program, in which, typically, parts of the program are put in place over time.

The second stage begins once the proposal and plan have been approved, and implementation is underway. During this second stage, the school will report annually on the implementation of the plan, using a modified version of the annual report.

TABLE E sets out the Committee's recommended compliance process respecting new and existing programs to determine compliance with the national requirement.

¹⁷ This would also include a Canadian institution already offering a civil law degree that seeks to offer a J.D. /LL.B.

TABLE E
Compliance Process

a) Existing Canadian Common Law Programs

1. Upon receipt of a law school's completed annual report, the Approval Committee reviews it and any supporting documents in accordance with a specified timeline, a sample of which is set out in **Appendix 4**.¹⁸
2. The Approval Committee determines compliance with the national requirement and provides a draft report to the law school, setting out the Committee's conclusions and the basis for those conclusions. The law school is invited to provide comments on the draft report.
3. If the Approval Committee is satisfied that the school's program(s) meets the national requirement, the Approval Committee's draft report is finalized and provided to the law school and posted on the Federation website.
4. If the Approval Committee is of the view that the annual report raises issues regarding compliance, its draft report identifies the issues using one or more of the following rating categories:

- o **Deficiency** - indicates non-compliance with one or more requirements. If a "deficiency" has been identified and the school and the Approval Committee cannot agree on how to address it, the Approval Committee issues its final report.

The compliance process will be an iterative one, the goal of which is to resolve deficiencies wherever possible before the Approval Committee issues a final report. The iterative process ensures that, if useful and directed, discussion toward a solution continues in an attempt to resolve the issues. It will be important to keep in mind, however, that there are annual time lines that must be met for issuing the Approval Committee's report. The Approval Committee ends discussion if it determines no further progress is being made.

- o **Concern** - indicates that although one or more requirements is currently met, it is at a minimum level that could deteriorate to become a deficiency. A school may note the "concern" without acting upon it, but it may be advisable for the school to resolve the concern, since it would be noted in the Approval Committee's final report. The iterative process described under "deficiency" could be used to resolve the "concern" if the parties agree.
- o **Comment** - this addresses a missing detail, a question, or a suggestion for more information. A school may take note of a "comment" without taking action upon it, but if it wishes to clarify or respond the Approval Committee can then re-issue its report reflecting this.

¹⁸ **Appendix 4** sets out the sample timeline for the 2012 report. That report will be a progress report. The basic timeline would also apply in 2013 and 2014 and in 2015 and thereafter when the national requirement is in force.

5. As set out above, the school has the opportunity to respond to the draft report within a specified period of time. If the Approval Committee seeks more information or other action, the school may provide it or agree to undertake to do what is requested of it.
6. The conclusion of the Approval Committee's final report sets out one of the following ratings:
 - o "The law program has complied with the national requirements. *Approved.*"
 - o "The law program has mostly complied with the national requirements, except for deficiencies in the following areas... *Approved with notice to remedy specified areas of non-compliance.*"

The notice to remedy specifies that for the program to retain approved status the deficiencies must be addressed by the next reporting period, or in exceptional cases, by a subsequent reporting period.
 - o "The law program has not complied with the national requirement. *Not approved.*"
7. Only the final report of the Approval Committee will be public. All draft reports and ongoing discussions will not be public. The progress reports prepared in 2012, 2013 and 2014 will also not be public.

b) New Canadian Common Law Programs

Proposal Stage

8. Using the annual report format, the school provides its proposal for a new program. The proposal includes a plan describing how and when the program will achieve each of the provisions of the national requirement. The proposal is to be provided before the school takes steps to commence the program.
9. The Approval Committee determines prospectively whether the proposal, including implementation plan, if implemented, would comply with the national requirement. It provides a draft report to the law school, setting out its conclusions and the basis for those conclusions. The law school is invited to provide comments on the draft report.
10. When the Approval Committee issues a draft report respecting a new program it may contain "comments," "concerns" and/or "deficiencies" for the proposed new law school program to address before the Approval Committee issues a final report, and the school may respond as set out above. As in the case of the compliance process for established programs the process will be an iterative one leading to the final report.

11. Approval for a new program will be prospective because the first students will not graduate from the program until a number of years in the future. Accordingly the ratings for such programs will be:
- o “The proposal and implementation plan for a law program, if followed, will comply with the national requirement. *Preliminary Approval, subject to implementation of the program as proposed.*”
 - o The law program as proposed will not comply with the national requirement. *Not Approved.*”
12. Only the final report of the Approval Committee will be public. All draft reports and ongoing discussions will not be public.

Reporting Stage

13. The process in paragraphs 1-7, modified to measure progress against the implementation plan, continues to be followed annually until the first graduates of the program are in their final year. Thereafter the process in paragraphs 1-7 applies, without modification.

The Approval Committee should be authorized to make any changes, revisions or additions to the reporting timeline as it determines necessary to ensure that the compliance process in **TABLE E** operates in an effective manner.

Recommendation 12

The compliance process set out in TABLE E be approved.

Recommendation 13

The Approval Committee be authorized to make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.

PUBLICATION OF REPORTS

Beginning in 2015 when the national requirement comes into effect and annually thereafter the Approval Committee's final reports will be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought. This recommendation is subject to the proviso that any information subject to privacy provisions or other personal or confidential information will not appear in the public report.

The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model. This will be important information for law societies, the NCA and law students.

Because the national requirement does not come into effect until 2015, the reports in 2012, 2013 and 2014 will be progress reports and will not be public.

Recommendation 14

Beginning in 2015 and annually thereafter the Approval Committee's final reports be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.

To reflect that the national requirement does not come into effect until 2015, the progress reports in 2012, 2013 and 2014 not be public.

THE CANADIAN COMMON LAW PROGRAM APPROVAL COMMITTEE

As discussed above, the Committee recommends that the "monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining

the Federation’s relationship with Canadian law schools,” be called the Canadian Common Law Program Approval Committee (“the Approval Committee”). The name identifies the committee’s primary responsibility, but is not intended to limit the Approval Committee’s role to this single area. To fulfill the Committee’s mandate to make recommendations about the monitoring body this report addresses the following:

- Structure of the Approval Committee
- Jurisdiction and Mandate
- Committee Member Qualifications and Committee Composition
- Resourcing

STRUCTURE OF THE APPROVAL COMMITTEE

Given that law societies have put in place a national requirement for entry to law society admission programs, it is logical that the Approval Committee be part of the Federation. As a national committee it will ensure a coherent approach to the implementation of the national requirement.

The Working Group report establishing the Committee directed that it consider the possible role of the NCA in the compliance process. While it may make sense in the future to bring the two bodies together, the Committee is of the view that it is important at this stage for the Approval Committee to be an entity structurally separate from the NCA. This will allow the national requirement compliance process to establish a unique profile that will be important, particularly in the early years of implementation.

In addition, the NCA has an established profile as the body that assesses the qualifications of individuals with legal education and professional experience obtained outside of Canada, or in a civil law program in Canada, who wish to be admitted to a law society in a common law jurisdiction in Canada. Its mandate and workload are already demanding. At this stage it should not be required to take on a new function.

The Approval Committee should be established and populated forthwith to ensure that it is in place to assess the first law school compliance reports that will be due in 2012.

Recommendation 15

The Federation establish a new committee to be called the Canadian Common Law Program Approval Committee (the Approval Committee).



JURISDICTION AND MANDATE

The creation of the Approval Committee offers an opportunity to go beyond the required compliance function that was only one of the Task Force's interests. While this compliance function must be a central responsibility, the Approval Committee also has an important role to play in enhancing the institutional relationship between law societies and law schools at a national level. As the Federation continues to develop national approaches to regulatory issues (e.g. national standards for admission to law societies, model codes of conduct etc.), there will be increasing opportunities to advance the discussion of the continuum of legal education. The Approval Committee should play a role in this discussion.

Given that recommended membership of the Approval Committee will include both Law Deans and law society regulators from across the country, the opportunity for a meaningful exchange of ideas is significant.

Recommendation 16

The Approval Committee have the following mandate:

- ***To determine law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. This will apply to the programs of established Canadian law schools and those of new Canadian law schools.***
- ***To make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in this report.***
- ***To make any changes, revisions or additions to the draft reporting timeline set out in Appendix 4 and any other reporting timelines as it determines necessary to ensure that the compliance process operates in an effective manner.***
- ***To post its final annual reports on the Federation public website and to post information reports on the website, covering, at a minimum, the list of approved law school programs and issues of interest respecting the continuum of legal education.***

- ***To participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level. This could, for example, include efforts such as promoting a voluntary national collaboration on ethics and professionalism learning that would further enhance teaching, learning and practice in this area.***
- ***To ensure appropriate training for its members.***
- ***To undertake such other activities and make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in this report.***

To ensure that the national requirement and the compliance process remain relevant and effective it is essential that the Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process. The first evaluation should be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting time line and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the time line.

Nothing in this recommendation should be seen as precluding adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate above. It should be open to the Approval Committee to recommend the timing of the evaluations.

Recommendation 17

The Federation, with the assistance of the Approval Committee, undertake regular evaluation of the national requirement and compliance process, the first to be completed at least by 2018 and no less frequently than every five years thereafter. The Federation should determine the timing and terms of reference for the evaluation and the reporting timeline and the Approval Committee should ensure that the evaluation is completed and any recommendations made within the timeline. Nothing in this recommendation should preclude adjustments and changes to the compliance process in the years between evaluations, as set out in the mandate in Recommendation 16. It should be open to the Approval Committee to recommend the timing of the evaluations.

COMMITTEE MEMBER QUALIFICATIONS AND COMMITTEE COMPOSITION

The Approval Committee's size should reflect both the need for a cross section of qualifications and the advantage of establishing a relatively small group to develop a coherent and expert approach to the issues.

The Committee has considered the qualifications that should be represented on the Approval Committee and the appointment process, size, member composition and term of service for this new body.

TABLE F contains the recommended qualifications.

TABLE F Qualifications for Members of the Approval Committee

The members of the Approval Committee should be chosen with a view to competence and involvement with and understanding of the issues. The following qualifications should be represented on the Approval Committee, although there should not be a requirement that each member possess all the qualifications:

- Institutional knowledge concerning law societies and the Federation.
- Diversity of experience and perspective.
- Understanding of the regulation of lawyers and the operation of law societies.
- Experience with the regulation of lawyers and the operation of law societies and admission to the profession.
- Experience as a Law Dean or law school administrator (includes Associate, Assistant and Vice Deans).
- Bencher experience.
- Bilingualism, coupled with a common law background.

All members of the Approval Committee should,

- have sufficient time to devote to the work;
- have sound judgment; and
- the ability and willingness to work cooperatively and in a team for the effective implementation of the national requirement.

TABLE G contains the recommended appointment process, size, member composition and term of service for the Approval Committee.

TABLE G
Approval Committee Composition

- The Approval Committee will have seven members, to be appointed by the Federation Council as follows:
 - o Three current or former Law Deans or Law School Administrators (includes Associate, Assistant and Vice Deans), to be recommended by the CCLD.
 - o One Law Society CEO or designate of the CEO.
 - o Three lawyers with experience in law society regulation.
 - o The Chair of the Approval Committee will be one of the three lawyers or the CEO or staff designate, and will be named as Chair by the Federation Council.
 - o If none of the three lawyers is a Federation Council member, the Federation Council may appoint one of its members as a non-voting liaison.
 - o The Managing Director of the NCA will be invited to attend the meetings, without being a member or having a vote.
- Staff to the Approval Committee who attends the meetings will not be a member or have a vote.

- The term for each of the seven members will be three years, renewable once in the sole discretion of Federation Council. The term appointments will be made on a staggered basis, so that the terms of no more than three members will expire in any year. Some of the initial appointments may be made for shorter terms to enable the establishment of the staggered terms, as the Federation Council deems appropriate.

Recommendation 18

The qualifications to be represented among the members of the Approval Committee set out in TABLE F be approved.

Recommendation 19

The appointment process, size, member composition and term of service for the Approval Committee set out in TABLE G be approved.

RESOURCING

The Committee is not in a position to state with certainty what the administrative and other resource needs of the Approval Committee will be. Clearly it will be essential to its effective operation that there be sufficient resources to support its work, including professional and support staff, office space and financial resources. It will be important that staffing be determined forthwith to support the Approval Committee.

The Committee recommends that law societies, through the Federation, fund the Approval Committee.

Recommendation 20

The Approval Committee be resourced forthwith and with sufficient professional and support staff and financial resources to enable it to fulfil its mandate. Law societies, through the Federation, fund the Approval Committee.

CONCLUSION

This report and its recommendations are the blueprint for implementing the Task Force recommendations, providing the guidance and direction necessary for law schools, law societies, the NCA and the Approval Committee. The recommendations have been developed in a spirit of collaboration and with a view to establishing an implementation structure that is clear, effective and appropriately balanced in its effect on law schools, law societies, the NCA and the Approval Committee.

The recommendations recognize that the implementation process must be adaptable to changing conditions and realities in law societies and law schools. The composition of the Approval Committee ensures that discussion on the issues will include both law schools and law societies with the goal of ensuring the ongoing relevance of the national requirement in the public interest and recognizing the importance of Canadian law school education that is innovative and flexible.





APPENDIX 1

Recommendations from the Task Force on the Canadian Law Degree

October 2009

FEDERATION OF LAW SOCIETIES OF CANADA'S TASK FORCE ON THE CANADIAN COMMON LAW DEGREE

RECOMMENDATIONS

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

A. Statement of Standard

1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

1.2 Legal Research

The applicant must have demonstrated the ability to,

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

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- communicate clearly in the English or French language;
- identify the purpose of the proposed communication;
- use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and

- effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- d. the duty to communicate with civility;
- e. the ability to identify and address ethical dilemmas in a legal context;
- f. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,
 - i. circumstances that give rise to ethical problems;
 - ii. the fiduciary nature of the lawyer's relationship with the client;
 - iii. conflicts of interest;
 - iv. duties to the administration of justice;
 - v. duties relating to confidentiality and disclosure;
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- principles of common law and equity;
- the process of statutory construction and analysis; and
- the administration of the law in Canada.

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- Canadian criminal law; and
- the principles of Canadian administrative law.

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- contracts, torts and property law; and
- legal and fiduciary concepts in commercial relationships.

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. Academic Program

1.1 The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.

1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

1.3 Holders of the degree have met the competency requirements.

1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.

1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.

2. Learning Resources

2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

2.3 The law school has adequate information and communication technology to support its academic program.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.
6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.



APPENDIX 2

Working Group Report on the Establishment of the Implementation Committee

May 2010

RECOMMENDED PROCESS FOR ESTABLISHING THE IMPLEMENTATION COMMITTEE

1. An Implementation Committee should be established to be known as the Federation of Law Societies of Canada's Common Law Degree Implementation Committee ("the Implementation Committee").

2. The Implementation Committee's mandate should be,
 - a. to determine how compliance with Section C (Approved Canadian Law Degree)¹ of the recommendations of the Task Force on the Canadian Common Law Degree will be measured. Its mandate may include clarifying or elaborating on the recommendations, where appropriate, to ensure their effective implementation, but will not include altering the substance or purpose of them; and

 - b. to make recommendations as to the establishment of a monitoring body to assume ongoing responsibility for compliance measurement, including an evaluation of the compliance measurement program and the required competencies, and for maintaining the Federation of Law Societies of Canada's ("the Federation") relationship with Canadian law schools. The Implementation Committee should consider any role the National Committee on Accreditation might play in that monitoring process.

3. The Implementation Committee should have seven members, as follows:
 - a. Two law school deans chosen, where possible, from among those deans currently serving on Federation committees.

 - b. At least one law society member who served on the Task Force on the Canadian Common Law degree.

¹ Section C incorporates by reference the recommendations in Sections A and B. The Task Force Recommendations are attached at the end of this report.

- c. At least one law society member who sits on the current Executive of the Federation.
 - d. At least one law society member who did not sit on the Task Force on the Canadian Common Law Degree.
 - e. At least one sitting bencher, either elected or appointed.
4. The Chair of the Implementation Committee should be one of the law society members. The Managing Director of the National Committee on Accreditation should be invited to attend the Implementation Committee meetings, without being a member of the Committee. The Federation of Law Societies Executive should appoint the Implementation Committee members and name the Chair.
 5. Subject to the Federation's approval, the Implementation Committee should be entitled and encouraged to seek assistance from individuals in law societies, law school faculties and elsewhere as it considers appropriate to ensure the effective carrying out of its mandate.
 6. To ensure that the Implementation Committee can carry out its mandate effectively, it should receive appropriate resourcing and funding, including staff and research assistance.
 7. The Implementation Committee should present its final report to Federation Council no later than September 2011, with approval sought from law societies by December 2011. The Implementation Committee should begin meeting no later than June 2010.



APPENDIX 3

Canadian Common Law Degree Law School Report Form

Common Law Degree
Implementation Committee

August 2011



Canadian Common Law Degree Law School Report Form

Submitted by:

Name of institution

Faculty name

Date

Canadian Common Law Degree Law School Report Form

PREFACE AND PURPOSE OF PROCESS:

Each Canadian law school with a common law degree program is to complete the following report form to enable the Canadian Common Law Program Approval Committee (Approval Committee) to determine that the law school's graduates have earned degrees that meet the Federation of Law Societies of Canada's national requirement (national requirement) for entry to the admission programs of law societies in Canadian common law jurisdictions. The form contains two parts. Part 1 seeks information common to all the law school's programs and Part 2 seeks information respecting each program for which the law school seeks approval. Law schools will complete a Part 2 for each program, including joint programs, for which approval is sought.

Beginning in 2015 and annually thereafter the Approval Committee's final reports will be public and posted on the Federation's website. These reports will set out the basis for the Approval Committee's findings respecting each law program for which approval is sought, provided that any information subject to privacy or other personal information will not appear in the public report. Because the national requirement does not come into effect until 2015, the reports in 2012, 2013 and 2014 will be progress reports and will not be public.

The Federation website will also identify each school's programs that apply the Program Approval Model and those that apply the Individual Student Approval Model.



Canadian Common Law Degree
Law School Report Form

Contact Information

Name of Faculty/School:

Address:

Telephone: _____

Fax: _____

Web Site Address (URL):

Contact Person

Name: _____

Title: _____

Telephone: _____

Fax: _____

E-mail: _____



Canadian Common Law Degree
Law School Report Form

Signature Form

(Name of Institution and Faculty/School)

submits the following documentation to the Federation of Law Societies of Canada in accordance with the requirements for approval of the common law degree for purposes of entry of their graduates to the admission programs of law societies in Canadian common law jurisdictions.

The information submitted in this Report is a true and accurate description of the law faculty/school's academic program and learning resources on which information is requested.

Signature of Dean or other Administrative Head of the Faculty/School

Name

Title

Date



Canadian Common Law Degree Law School Report Form

GLOSSARY OF TERMS - TBD

GENERAL INSTRUCTIONS - TBD

[The commentary and elaboration on the competencies and any other guidance will be provided here.]

CALENDARS

Electronic copies of the latest calendar must be included. In cases where the latest calendar information does not correspond to the curriculum of the upcoming graduation class, an appropriate explanation must be part of the documentation provided.

EXHIBITS

The following supplemental information should be attached at the end of the completed report.

- Exhibit 1: Documents describing the processes and policies for student admission, promotion, and graduation
- Exhibit 2: Copies of degree certificates and transcript entries for all variations of the program [This might need an explanation / examples – such as joint degrees with other professional faculties, joint degrees with other universities etc.]
- Exhibit 3: The program may wish to include a matrix of course and other offerings against the national requirements. See example at xxxx.
- Exhibit 4: Any other document that the program deems relevant for evaluation.

WHERE TO SEND YOUR MATERIALS

[Contact information for Approval Committee will be inserted.]



Canadian Common Law Degree Law School Report Form

PART 1: INFORMATION COMMON TO ALL THE LAW SCHOOL'S PROGRAMS

Please provide a general description of the law school/faculty and any other introductory material.

Please list below all programs, including joint programs, offered by the law school and which compliance model will be followed for each, if any:

Names of Programs	Compliance Model (program approval, individual student approval, or no approval will be sought)



Canadian Common Law Degree Law School Report Form

1. Learning Resources:

1.1 *The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*

The Implementation Committee recommends that the following information be provided in this section:

- General description of numbers of full-time faculty, contract instructors, sessional lecturers and support staff, including significant changes from previous year.
- General description of full-time faculty, contract instructor and sessional lecturer qualifications.
- Number of full-time equivalent students in each program.
- General description of student support services.
- Overview of law school operating budget for the academic program from all sources, and sources of funding.

1.2 *The law school has adequate physical resources for both faculty and students to permit effective student learning.*

The Implementation Committee recommends that the following information be provided in this section:

- Overall description of law school space, including whether the space is adequate for the law program(s), any space challenges faced by the school and their impact on the program and proposed or planned solutions.
- Description of space available to the law school to carry out the academic program offered, including seminar rooms, quiet study space for students, etc.
- Description of accessibility of the current space.

1.3 *The law school has adequate information and communication technology to support its academic program.*

The Implementation Committee recommends that the following information be provided in this section:

- Description of what IT services are provided at the law school.
- Description of dedicated or shared staff and level of support provided to faculty, staff and students.

Canadian Common Law Degree Law School Report Form

- 1.4 *The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*

(A useful reference for this requirement is the Canadian Academic Law Library Directors Association's standards.)

The Implementation Committee recommends that the following information be provided in this section:

- Overview of library staff complement, qualifications and reporting structure.
- Overview of library facilities and description of collection and collections policies.
- Overview of library acquisitions budget.
- General description of support services available to faculty, students and other library users.

PART 2: INFORMATION SPECIFIC TO EACH PROGRAM

Please indicate under which of the following your program is applying for approval, for this reporting period:

- Program Approval Model: Each graduate must have obtained an approved law degree for purpose of entry to law society bar admission/licensing programs
- Individual Student Approval Model: The law school will individually evaluate each student and determine which graduates will have an approved law degree for purpose of entry to law society bar admission/licensing programs.

COMPETENCY REQUIREMENTS

1. Skills Competencies

The applicant must have demonstrated the following competencies:

Canadian Common Law Degree Law School Report Form

1.1 Problem Solving

In solving legal problems, the applicant must have demonstrated the ability to,

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

Please describe how your graduates will meet this requirement (supporting documents may be attached):

1.2 Legal Research

The applicant must have demonstrated the ability to,

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

Canadian Common Law Degree Law School Report Form

Please describe how your graduates will meet this requirement (supporting documents may be attached):

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

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

Please describe how your graduates will meet this requirement (supporting documents may be attached):

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,

1. *Knowledge of,*
 - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,*
 1. *circumstances that give rise to ethical problems;*



Canadian Common Law Degree
Law School Report Form

2. *the fiduciary nature of the lawyer's relationship with the client;*
 3. *conflicts of interest;*
 4. *the administration of justice;*
 5. *duties relating to confidentiality, lawyer-client privilege and disclosure;*
 6. *the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and*
 7. *the importance and value of serving and promoting the public interest in the administration of justice.*
- b. *The nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public.*
 - c. *The range of legal responses to unethical conduct and professional incompetence;*
 - d. *The different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.*
2. Skills to,
- a. *identify and make informed and reasoned decisions about ethical problems in practice; and*
 - b. *identify and engage in critical thinking about ethical issues in legal practice.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

Please describe how your graduates will have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. (Supporting documents may be attached):

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

Canadian Common Law Degree Law School Report Form

3.2 Public Law of Canada

The applicant must have an understanding of the principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

3.3 Private Law Principles

The applicant must demonstrate an understanding of the principles that apply to private relationships, including,

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships*

Please describe how your graduates will meet this requirement (supporting documents may be attached):



Canadian Common Law Degree Law School Report Form

APPROVED CANADIAN LAW DEGREE

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria;¹⁹

4. Academic Program

4.1 The law school's academic program for the study of law consists of three full-time academic years or the equivalent in course credits, which, presumptively, is 90 course credits.

Please describe how your graduates will meet this requirement (supporting documents may be attached):

4.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.

Please describe how your graduates will meet this requirement (supporting documents may be attached):

4.3 Holders of the degree have met the competency requirements.

Please add any comments in addition to the responses to the competency requirements, above:

¹⁹ The Approved Canadian Law Degree criteria include both the Academic Program, in Part 2 of this form, and the Learning Resources, in Part 1 of this form.

Canadian Common Law Degree Law School Report Form

Please describe how your program will ensure that transfer students from programs other than a Federation approved Canadian common law program will meet the national requirement:

Please describe how your program will ensure that graduates of your program who take part of their program at another institution (either through an exchange or letter of permission) will meet the national requirement:

Canadian Common Law Degree Law School Report Form

4.4 *The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies. (“Course” is properly interpreted to allow for both,*

- *a single stand alone course devoted to ethics and professionalism that at a minimum addresses the required competencies, and*
- *a demonstrable course of study devoted to ethics that could be delivered,*
 - (1) *within a single course that addresses other topics, provided there is a dedicated unit on ethics and professionalism that at a minimum addresses the required competencies; and/or*
 - (2) *in multiple years within courses that address other topics, provided there are dedicated units on ethics and professionalism that at a minimum address the required competencies.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):

4.5 *Subject to special, circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*

Please describe how your graduates will meet this requirement (supporting documents may be attached):





APPENDIX 4

Common Law Program Approval Timelines

Common Law Degree
Implementation Committee

August 2011

Canadian Common Law Program Approval Timelines

Draft for 2012 Process

This calendar is an approximate timeline of the approval process. The dates may vary depending on your situation.

Transition note: The Canadian Common Law Program National Requirement comes into effect for 2015 graduates. Therefore, the 2012, 2013 and 2014 approval processes will be prospective. That is, the Committee will be evaluating, at least in part, the future plans for the law programs, for which approval is being sought. As of 2015, and every year thereafter, the Committee will evaluate the program followed by the graduates of that year.

<i>Date</i>	<i>Event</i>	<i>Action by</i>
October - November 2011	Draft reporting form and instructions are distributed to the law schools for advance information.	Staff
November 2011	Dean acknowledges receipt of documentation and timelines for report completion.	Dean
December 2011	Preparation of report begins.	Dean/Law School Faculty and Staff
January 2012	Final version of reporting form is sent to the Dean.	Staff
February/ March 2012	Completed report is sent to Staff.	Dean
March 2012	Staff review form, seek any clarification required from the law school, and distributes it to the Committee members.	Staff
April 2012	Committee meets to consider the reports.	Committee and Staff



<i>Date</i>	<i>Event</i>	<i>Action by</i>
May 2012	<p>Draft decision is sent to Dean for comment.</p> <p>Dean sends his/her comments/responses, if any, to Staff.</p> <p>Dean's comments, if any, are sent to Committee for review and response. Discussions on any deficiencies take place and involve the Dean, Committee Chair or his/her delegate.</p> <p>Committee finalizes decisions.</p>	<p>Staff</p> <p>Dean</p> <p>Staff</p> <p>Committee</p>
June 2012	<p>Committee Final Report is prepared and reviewed.</p> <p>Committee Final Report is sent to Dean by June 30, 2012.</p>	<p>Committee Chair and Staff</p> <p>Committee Chair and Staff</p>
July 2012	<p>Report on 2012 reviews is forwarded to Federation and law societies for information. No website posting because 2012 is a progress report.</p>	<p>Staff</p>



INFORMATION

CONTINUING PROFESSIONAL DEVELOPMENT (CPD) REQUIREMENT COMPLIANCE - UPDATE

9. Lawyers and paralegals subject to the CPD requirement are obliged to meet their 2011 required hours by December 31, 2011. To report their CPD hours lawyers and paralegals must register on the Law Society's "portal" and access the section of the portal devoted to CPD.
10. Because the CPD requirement is new this year, the Law Society has developed a multi-step process to,
 - a. inform and educate the profession about the requirement;
 - b. remind individual lawyers and paralegals about the status of their reporting and compliance; and
 - c. continue to advise and remind the profession about the portal and how to use it.
11. This process has continued regularly throughout the year to date, but has been intensified since September and will continue as the deadline for compliance approaches. Because registration on the portal is the first essential step lawyers and paralegals must complete to be able to report compliance, the Law Society is paying particular attention to informing and reminding the profession about the portal. Currently approximately 15% of those required to meet the CPD requirement have not yet registered for the portal. However, in the four weeks since the Law Society ran a Notice to the Profession in the *Ontario Reports* and other locations concerning CPD compliance and the importance of portal registration, 3000 more people have registered. In addition the most recent reminder letters was sent out in mid-October and will result in more lawyers and paralegals registering.

12. Between now and the compliance deadline the Law Society will continue to monitor compliance and remind and inform those who have not yet reported compliance with the requirement. The Law Society will,
 - a. send general e-mail reminders to lawyers and paralegals;
 - b. send specific e-mail reminders (letters to those without e-mail) to those who have not yet registered on the portal;
 - c. remind all callers to the membership resource line and or attending CPD programs about registration and compliance;
 - d. provide additional general and specific reminders 45 days, 25 days, 15 days and 5 days before the end of the year; and
 - e. where necessary, make phone calls to lawyers or paralegals.

13. The Director, Professional Development and Competence, will continue to update the PD&C Committee on compliance.