



Tab 11

Report to Convocation April 23, 2015

Report on the Federation of Law Societies of Canada Council and Related Meetings, Ottawa, Ontario March 25-28, 2015

Purpose of Report: Information

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**COUNCIL MEETING AND RELATED MEETINGS OF THE
FEDERATION OF LAW SOCIETIES OF CANADA**

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INTRODUCTION

1. The Federation of Law Societies of Canada (the “Federation”) is the national coordinating body for Canada’s 14 law societies. It operates the National Committee on Accreditation (“NCA”), a Standing Committee at the Federation whose primary mandate is to assess the legal education and professional experience of persons whose legal education and professional experience were obtained outside of Canadian common law jurisdictions and who wish to be admitted to a common law bar in Canada. It provides administrative support to the National Criminal Law Program and the National Family Law Program. The Federation additionally engages in a number of national initiatives on which reports are received at its annual and semi-annual meetings.
2. Former Treasurer Thomas Conway is the Federation’s President for 2014-2015. Former Treasurer Laurie Pawlitza serves as the Federation Council member representing the Law Society of Upper Canada.
3. More information about the Federation can be found on its website at www.flsc.ca/.
4. The Federation typically organizes two conferences a year, at the times of its business meetings, for Council members, benchers and law society staff addressing regulatory themes of national importance.¹ At its most recent meetings, held March 25-28, 2015 in Ottawa, Ontario, in addition to a Council Meeting (March 26), the Federation held governance meetings in the context of its governance review with Federation Council members, Law Society CEOs and Law Society Presidents and Vice-Presidents on March 25 and 26, and a governance workshop for all participants on March 27 and 28.
5. Treasurer Janet Minor, Federation Council member Laurie Pawlitza, and staff Robert Lapper and Jim Varro attended the meetings on behalf of the Law Society of Upper Canada. Staff members Mary Shena and Marisha Roman were also present to assist with the organization of the dinner for delegates hosted by the Law Society on Friday, March 27.

GOVERNANCE MEETINGS

6. In June 2014, Federation Council approved the creation of a Governance Review Committee to conduct a governance review of the Federation. The review was prompted by, among other things, the growing demands on the Federation to lead national

¹All of the Federation’s national initiatives are funded by a levy assessed to each member law society. The levy is based on the number of “full-time equivalent” (“FTE”) members in the jurisdiction. In 2013-2014, the levy was \$25 per FTE in common law jurisdictions. The amount was raised to \$28.50 for 2014-2015, in part in order to develop appropriate resources for the Federation to meet its mandate.

regulatory initiatives and the expectation that the Federation will perform at high standards.

7. In July 2014, Council approved the composition of the Committee, which includes the Law Society of Upper Canada's Robert Lapper, as well as Marie-Claude Bélanger-Richard, Past Federation President (Chair); Jeff Hirsch, Federation Vice President; Sheila Greene, Council member for the Law Society of Newfoundland & Labrador; Sheila MacPherson, Council member for the Law Society of the Northwest Territories; Steve Raby, Council member for the Law Society of Alberta; Johanne Brodeur, former Bâtonnière of the Barreau du Québec, and Tim McGee, CEO, Law Society of British Columbia.
8. The Ottawa meeting provided all Federation member law societies with an opportunity to continue to work on the important governance issues.
9. The Governance Review Committee will endeavor to bring proposals for change to Council and law societies later in 2015.

COUNCIL MEETING

10. The Council met on March 26, 2015. It received reports from the Federation's President, Thomas Conway, and its CEO, Jonathan Herman. The Council Meeting agenda addressed a range of Federation matters, including the following.

National Mobility

11. Council received an update regarding the status of national mobility. The National Mobility Agreement 2013 and Territorial Mobility Agreement 2013 have been approved by all jurisdictions, but have not yet been implemented.
12. Implementation is awaiting approval by the government of Quebec of the required changes to the Barreau's regulations. Pursuant to the statutory regime governing all professions in Quebec, amendments to regulations require government approval.

National Committee on Accreditation (NCA)

13. The NCA reports that in the first eight months of 2014/2015 it:
 - a. received 847 applications for assessment (consistent with the number of applications received last year);
 - b. issued 662 Certificates of Qualification;
 - c. considered 11 appeals of NCA assessments (8 dismissed, 2 successful in whole or in part, and 1 requiring further materials to be provided); and

- d. delivered 3,724 examinations, which were written both in Canada and in locations around the world.
14. The NCA also approved a new [Assessment Policy](#), effective January 1, 2015 that brings it into compliance with the National Requirement.

Standing Committee on Access to Legal Services

15. The Standing Committee on Access to Legal Services (“SCALS”) facilitates the Federation’s strategic objective of collaborating with other participants in the legal system to foster greater public satisfaction with access to legal services. Law Society CEO Robert Lapper is a member of this Standing Committee. The Standing Committee has recently:
- a. Established a working group to facilitate exchange of information between law societies about access to justice;
 - b. Assisted in planning and attended an in-person meeting of representatives of provincial and territorial access to justice committees held in Toronto on March 13, 2015; and
 - c. Prepared a submission to the Federal Court’s Rules Committee in response to a public consultation, describing the Federation and law society approaches taken with respect to limited scope retainers.

Standing Committee on the Model Code of Professional Conduct

16. The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to Council with respect to any changes to the Model Code. The Law Society’s Jim Varro, Director of Policy, serves on the Standing Committee.
17. In the first quarter of 2015, the Standing Committee has engaged in numerous discussions with its law society liaisons, in an effort to more deeply integrate law society and Standing Committee work on the Model Code. Several of its members participated in a CBA-Federation Annual Ethics Forum, held in Toronto on March 6, 2015.
18. The Standing Committee also continues to consider potential amendments to the Model Code. It is studying submissions it received in response to public consultations held between July and November 2014 on a number of draft amendments to the Model Code, including, for example, proposed rule changes to eliminate language that stigmatizes those suffering from mental health problems or that might discriminate against equity seeking groups, and proposed new guidance for communicating with expert witnesses. The Standing Committee is also drafting amendments related to lawyers departing from law firms, having consulted with several law society liaisons regarding this area. It is also

preparing draft amendments related to dishonesty/fraud by lawyers, which will be included in its next round of consultations with all law societies.

National Requirement Review Committee

19. The National Requirement for entry to law society admission or licensing programs was approved in 2010, and takes effect in 2015. In June 2014, the Federation Council approved the establishment of a National Requirement Review Committee (the “Review Committee”), and at its October meeting Council approved this Committee’s Terms of Reference for it to:
 - a. Conduct an initial evaluation of the National Requirement focusing on identifying immediate issues that have become evident as part of early implementation; and
 - b. Consider and make recommendations on whether to include a non-discrimination provision in the National Requirement.

20. Following extensive consultations by the Federation Executive with respect to the composition of the Review Committee, at its Ottawa meeting Council approved the appointment of the following individuals to the Review Committee:
 - (a) Thomas G. Conway, Federation President, Chair
 - (b) Herman Van Ommen, Q.C. (Law Society of British Columbia)
 - (c) Kevin Feth, Q.C. (Law Society of Alberta)
 - (d) Peter Wardle (Law Society of Upper Canada)
 - (e) Tilly Pillay, Q.C. (Nova Scotia Barristers’ Society)
 - (f) Shauna Van Praagh (Faculty of Law, McGill University)
 - (g) Trevor Farrow (Osgoode Hall Law School)
 - (h) Diana Miles (Executive Director, Organizational Strategy /Professional Development & Competence, Law Society of Upper Canada)

21. In addition, the Chairs of the Canadian Common Law Program Approval Committee and the National Committee on Accreditation or their respective designates will be appointed as *ex officio* members without voting rights so as to ensure effective dialogue between the Canadian Common Law Program Approval Committee, the National Committee on Accreditation and the Review Committee.

22. Council approved amended terms of reference which require the Review Committee to report to Council by May 2015 with its proposed work plan.

Canadian Common Law Program Approval Committee

23. Laurie Pawlitz, Treasurer Emeritus of the Law Society and Chair of the Canadian Common Law Program Approval Committee (the “Approval Committee”), presented a report on the Approval Committee’s recent activities. Approval Committee members include Morgan Cooper (Newfoundland & Labrador), Steve Raby (Alberta), Alan

Treleaven (British Columbia), Dean Lorne Sossin (Osgoode Hall Law School), Dean Mary Anne Bobinski (University of British Columbia) and Dean Sébastien Lebel-Grenier (Université de Sherbrooke). Law Society of Upper Canada policy counsel Sophia Sperdakos and Juda Strawczynski are providing policy and operational support to the Approval Committee.

24. Council reappointed Laurie Pawlitzka and Steve Raby to the Approval Committee for three year terms. Ms. Pawlitzka was re-appointed as Chair.
25. Dean Bobinski is stepping down as Dean of the University of British Columbia Faculty of Law, and her replacement will be determined later this year based on a nomination by the Canadian Council of Law Deans (“CCLD”).
26. The Approval Committee is engaged in the iterative process of determining law school program compliance with the Federation’s national requirement for entry to law society admission programs in Canadian common law jurisdictions (the “National Requirement”), which took effect January 2015.
27. Over the past several months, the Approval Committee’s work has included:
 - a. Evaluating and making decisions on all Canadian JD programs, approving 19 programs, and providing preliminary approval for 2 programs, pending graduation of their first classes;
 - b. Finalizing the 2015 law school report form;
 - c. Developing criteria to evaluate joint programs (as joint and dual programs will be subject to the National Requirement in 2017);
 - d. Liaising with the CCLD; and
 - e. Developing a list of issues which should be considered by the National Requirement Review Committee.
28. As described above, the Approval Committee will work closely with the Review Committee, in addition to continuing with its regular mandate. It will be meeting in June 2015 to, *inter alia*, consider the 2015 law school reports.

National Admission Standards Project (NASP)

29. The National Admission Standards Project (“NASP”) was established in 2009. At that time, the CEOs of the law societies and the Council of the Federation identified the need to develop national standards for admission to practice. The project reflects an important strategic priority identified by the Council of the Federation: the development and implementation of high, consistent and transparent national standards for the regulation of the legal profession.
30. The driving force behind national admission standards is mobility. Through the Federation’s mobility agreements, members of the legal profession in Canada today

enjoy unprecedented mobility between jurisdictions. Changes to the federal provincial-territorial Agreement on Internal Trade have also resulted in mobility rights for all licensed professionals and certified workers being enshrined in legislation.

31. Mobility has generated increased reflection about what the law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility may make different regulatory practices difficult to justify as being in the public interest. The NASP seeks to address this concern through common and consistent standards.
32. General oversight of the project is provided by a Steering Committee comprised of:
 - (a) Don Thompson, Q.C., Executive Director, Law Society of Alberta, Chair;
 - (b) Tim McGee, Q.C., CEO, Law Society of British Columbia;
 - (c) Alan Treleaven, Director, Education and Practice, Law Society of British Columbia;
 - (d) Jeff Hirsch, Council Vice-President and President-elect and past president, Law Society of Manitoba;
 - (e) Allan Fineblit, Q.C., former CEO, Law Society of Manitoba;
 - (f) Laurie Pawlitzka, Council member and past Treasurer, Law Society of Upper Canada;
 - (g) Robert Lapper, CEO, Law Society of Upper Canada;
 - (h) Diana Miles, Executive Director, Organizational Strategy / Professional Development and Competence, Law Society of Upper Canada;
 - (i) Lise Tremblay, CEO, Barreau du Quebec;
 - (j) Bâtonnier Bernard Synnott, Barreau du Quebec;
 - (k) Darrel Pink, Executive Director, Nova Scotia Barristers' Society;
 - (l) Bâtonnière Marie-Claude Bélanger-Richard, Q.C., Federation past president and former Bâtonnière, Law Society of New Brunswick; and
 - (m) Jonathan Herman, Federation CEO.
33. The Steering Committee is supported by Frederica Wilson, Senior Director, Regulatory and Public Affairs, Stephanie Spiers, Director, Regulatory Affairs and project manager, and Daphne Keevil-Harrold, Policy Counsel.
34. The NASP's work relates to the development of a profile of the competencies required upon entry to the profession and their assessment, and developing a standard for ensuring that applicants meet the requirement to be of good character.
35. The NASP developed the National Competency Profile, a profile competency required upon entry to the profession. It has been adopted by 13 law societies subject to the development and approval of a plan for implementation, including developing an appropriate assessment mechanism.
36. The NASP continues to focus on how the National Competency Profile will be assessed. In 2014, the NASP met with ten law societies to consider a range of possible methods for assessing the competencies. It is now developing a Business Plan to provide the

vision and structure for moving forward with developing a national qualifying assessment regime. It will be based on developing a defensible assessment program that will be developed and implemented in phases, with each phase building on the last. The Business Plan will also outline costs and timelines for the initiative.

37. The NASP intends to circulate the Business Plan together with a proposal for consideration, and to begin meeting with law societies in the spring of 2015.
38. It will be up to each law society to decide whether they are ready to commit to the proposed plan, and it may be that not all law societies will be ready to move forward at the same time. Law societies that commit at the outset will have the opportunity to be involved in the development process. Some law societies may decide to take a wait and watch approach, and join in at a later stage of implementation. Once a critical mass of law societies have decided to participate in the assessment plan, the technical work required to develop the assessment will begin. Development will involve law society staff from the participating jurisdictions with the relevant expertise. Law societies involved in the new assessment regime will be consulted and have opportunities to provide their input as the project progresses.
39. In addition to its work related to assessing competencies, the NASP continues to consider the development of a national Suitability to Practice / Good Character Standard through its Suitability to Practice Working Group comprised of staff from several law societies. The Law Society of Upper Canada's Sophia Sperdakos and Naomi Bussin serve on this Working Group.
40. The Suitability to Practice Working Group has considered feedback received in response to a fall 2013 consultation report on the Suitability to Practice / Good Character standard, and, based on the feedback received to date, will be circulating a further consultation report to law societies shortly.

National Discipline Standards Project (NDSP)

41. The National Discipline Standards Project ("NDSP") was launched in 2010 to develop national standards for the handling of complaints and discipline matters. After piloting 23 standards, 21 standards were included in the final National Discipline Standards. These final standards were approved on April 3, 2014 by Council for referral to the law societies for adoption and implementation by January 1, 2015. The Law Society of Upper Canada and all other law societies have now approved the standards and have agreed to participate in the implementation phase of the National Discipline Standards project.
42. On April 3, 2014 Council also approved terms of reference for a standing committee of the Federation to monitor implementation of the standards and to recommend such refinements to them as might be advisable in the future. Zeynep Onen, the Law Society's Director of Professional Responsibility, has been appointed to the standing

committee.

43. The standing committee has begun considering a variety of issues related to the implementation of the standards. Most law societies provided a first progress report in early 2015, and a further report will be provided later this year. Reporting data will assist the standing committee in identifying problems with the standards and areas for fine tuning.
44. Finally, as Standard 20 requires mandatory, annual training for adjudicators and references an optional national curriculum, the Standing Committee has established an Adjudicator Training Working Group whose mandate is to make a recommendation on a national curriculum for adjudicator training and effective delivery methods. The Law Society Tribunal's David Wright has been appointed to this Working Group which first met in March 2015.

Government Relations – Submission on Bill C-44

45. The Federation monitors federal legislative initiatives to determine whether they raise any issues of concern falling within the mandate of the Federation and its members. When proposed legislation raises issues relating to such matters as protection of solicitor-client privilege, the rule of law, or the independence of the legal profession, or where there might be an impact on the regulatory functions of law societies, the Federation's Executive assesses whether it would be appropriate to make submissions to the government and perhaps seek the opportunity to appear in person before parliamentary committees reviewing the legislation.
46. Where the position that might be taken by the Federation is consistent with those it has previously taken publicly, the Executive authorizes the submissions. In the event that a legislative initiative raises novel concerns, the Executive seeks the approval of Council and the views of the law societies before taking any position.
47. In November 2014 the Executive approved submissions regarding Bill C-44, *An Act to Amend the Canadian Security Intelligence Service Act and other Acts*. The Federation's submissions related to concerns that the proposed amendments could lead to situations in which a person who has been detained on the basis of confidential human source information may not know the basis for detention and may be denied the right to effective counsel. The Federation's submissions were sent to the Standing Committee on Public Safety and National Security. As the proposed legislation was approved by the House of Commons without change, referred to the Senate earlier this year, and subsequently referred to the Senate Standing Committee on National Security and Defense, the Executive has renewed the Federation's submission before this Senate committee.

CanLII REPORT

48. The Federation is the sole member of the Canadian Legal Information Institute (CanLII), which is financed by a separate membership levy paid through the Federation. CanLII President and CEO Colin Lachance reported on CanLII's activities and plans to Federation Council.
49. As announced in February, Mr. Lachance will be stepping down as President and CEO of CanLII effective April 30, 2015. A national search to find the next CanLII leader is ongoing.