Report to Convocation
December 2, 2016

Report on the Federation of Law Societies of Canada
Council and Related Meetings, St. Andrews by the Sea, N.B.
October 19-22, 2016

Purpose of Report: Information

Prepared by Jim Varro
Director, Office of the CEO and Corporate Secretary
INTRODUCTION

1. The Federation of Law Societies of Canada (the “Federation”) is the national coordinating body for Canada’s 14 law societies. The Federation engages in a number of national initiatives through various committees and other groups on which reports are received at its annual and semi-annual meetings.

2. The Federation also operates the National Committee on Accreditation (“NCA”), a Standing Committee at the Federation whose primary mandate is to assess the legal education and professional experience of persons whose 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.

3. In addition, the Federation provides administrative support to the National Criminal Law Program and the National Family Law Program.

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

5. The Federation typically meets twice a year to conduct its business meetings for Council members, benchers and law society staff. This includes a meeting of law society CEOs in the CEOs’ Forum and of law society presidents in the Presidents’ Forum.¹

6. Treasurer Paul Schabas, then Federation Council member Laurie Pawlitza, Benchers Ross Earnshaw (the new Federation Council member as of November 15, 2016), Michelle Haigh and Peter Wardle, CEO Robert Lapper, Diana Miles, Sophia Sperdakos and Jim Varro attended the St. Andrews by the Sea meetings held from October 19 to 22, 2016.² This report provides highlights of the meetings.

¹ The October 2016 meetings also included a Federation strategic planning session that included CEOs, law societies’ presidents, Federation Council members and Federation staff on October 21.

² The following Law Society representatives serve on Federation Committees and other groups (as of November 16, 2016). A full list of Federation Committees is at Tab 7.1.

At the governance (Benchers) level:

<table>
<thead>
<tr>
<th>Name</th>
<th>Committee</th>
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<tbody>
<tr>
<td>John Callaghan</td>
<td>Member, Litigation Committee</td>
</tr>
<tr>
<td>Dianne Corbiere</td>
<td>Member, Working Group on TRC Calls to Action</td>
</tr>
<tr>
<td>Malcolm Mercer</td>
<td>Member, National Committee on Accreditation</td>
</tr>
<tr>
<td>Ross Earnshaw</td>
<td>Member, Canadian Common Law Program Approval Committee</td>
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Conference Program

7. The Federation held a conference entitled “Legal Education - Building a Better Continuum Together” on October 19 and 20. The sessions challenged participants to reflect on legal education as a continuum from law school through to legal practice, and to think about how the Federation, law societies, legal communities and organizations and the academy can collaborate to better prepare law students and new lawyers for the realities of legal practice in a changing world.

8. It was recognized that law societies, law schools and Indigenous communities, all of which were represented among the participants, are among the key stakeholders that will shape the legal profession of the future. The representatives from the legal academy included law deans from across Canada. The conference program was designed to encourage the sharing of perspectives and lessons learned, with the opportunity to address important questions, including the role of experiential learning in legal education and responses to the Truth and Reconciliation Commission’s Calls to Action.

9. The conference program included the following:
   a. A keynote address by Paula Littlewood, Executive Director, Washington State Bar Association Lawyering on the major forces challenging traditional models of legal practice, what these changes mean for legal education and regulation and how collaboration among all parties in the education pipeline will be important for success in preparing tomorrow’s legal professional;
   b. “The Great Debate: Are Law Societies and Law Schools Ready for Change?” in which participants from the academy and law societies, including Treasurer Schabas, exchanged views about how each group views the other, the pressures on both law societies and law schools to evolve and how each group has responded to the calls for change;
   c. A session on The Indigenization of Legal Education and the Truth and Reconciliation Commission (TRC) Calls To Action, in which representatives of the

| Peter Wardle               | Chair, National Requirement Review Committee |
| Will McDowell             | Member, Public Affairs and Government Relations Committee |

Law Society CEO/senior staff:
- Rob Lapper: Member, Finance and Audit Committee
- Diana Miles: Member, National Requirement Review Committee
  - Member, CanLII Nominating Board
- Karen Manarin: Member, Standing Committee on National Discipline Standards
- Naomi Bussin: Member, Standing Committee on the Model Code of Professional Conduct
law societies and the academy considered a number of questions including what is Indigenous Law, and what does it mean to teach Indigenous Law or to train in Intercultural Competency, with attention to how thinking can be advanced collectively on a response to the TRC Calls to Action;

d. A session on experiential learning and what it means for future lawyers, in which panelists explored the what, why and how of experiential education, including the link between experiential learning and developing competencies, and how experiential learning can assist in training lawyers; and

e. Workshops, in which participants were led in a review of the themes and highlights from the first day of the Conference and shared their insights on both similar and different interests and goals of the law societies and law schools.

10. The conference began a dialogue that participants agreed should continue, with the goal of charting a new course toward a better legal education continuum.

**STRATEGIC PLANNING SESSION**

11. October 21 was set aside for a day-long strategic planning workshop, further to the direction of Council to develop the Federation’s Strategic Plan for 2017-2019. The strategic planning exercise, in providing an opportunity to bring focus to the efforts of the Federation, follows work done at the Federation governance level to establish the Federation’s vision and mission.³

³Our Vision Statement

Acting in the public interest by strengthening Canada’s system of governance of an independent legal profession, reinforcing public confidence in it and making it a leading example for justice systems around the world.

Our Mission Statement

The role of the Federation is to:

(a) act as a coordinator and facilitator among Members, establishing forums such as conferences, committees and other opportunities for dialogue where representatives of the Members may discuss issues of mutual interest and foster collaborative decision-making;

(b) promote the development of national standards and to encourage the harmonization of Members’ rules and procedures;

(c) act as the agent of all or some Members to undertake initiatives when all Members so agree;

(d) raise Members’ awareness of emerging issues that may warrant their attention, including important legislative or regulatory developments or trends;
12. With the Federation’s mission in mind, through a series of questions that were based on a version of the SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) as applied to the Federation’s work and initiatives, participants engaged in discussions that focused on developing a set of strategic objectives for the Federation that aligns with the mission and those matters of value and importance to the work of the law societies across Canada. Participants included Federation Council members, law society Presidents, CEOs and law society senior staff,

13. Participants engaged in small group and plenary conversations on a number of key strategic questions. These questions were developed based on the pre-workshop discussions held prior to the October meeting. The session was facilitated by and former bâtonnière du Québec Johanne Brodeur and former Law Society of Manitoba CEO Allan Fineblit.

14. The workshop resulted in a high level summary of the consensus on possible strategic objectives. The summary was referred to law societies for review. After feedback is provided, it is anticipated that a plan will take shape and will be provided to law societies for further review, and then scheduled for discussion at a future Federation Council meeting.

COUNCIL MEETING

15. The Council met October 22, 2016. It dealt with a number of decision items, received reports from the Federation’s President and its CEO and addressed a range of Federation matters.

(e) speak on behalf of the Members, when so mandated by Members, in Court proceedings and before parliamentary committees on matters that touch on core values and regulation of the legal profession;

(f) foster and maintain constructive relationships with key national stakeholders, such as the Canadian Bar Association, the federal Department of Justice, the Supreme Court of Canada and other federal courts, as well as the Council of Canadian Law Deans, and more generally to provide information and raise awareness about the role, responsibilities and activities of the Federation among the public, governments, and members of the legal profession; and

(g) participate in international forums for the purposes of:

(i) learning about international trends and developments in the area of regulation of the legal profession and sharing that information with Members; and

(ii) (i) providing information and raising awareness about the role, responsibilities and activities of the Federation and the Members, as well as about the Canadian justice and legal system, among organizations having an interest in such matters around the world.
Election of Executive Officers

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

17. The following individuals were elected as executive officers for the annual term beginning November 15, 2016:
   Me Maurice Piette, (Chambre des notaires du Québec), President
   Sheila M. MacPherson (Northwest Territories), Vice-President and President-Elect
   Bâtonnier Richard J. Scott, Q.C. (New Brunswick), Vice-President
   Jeff Hirsch (Manitoba), Past President

Reports for Discussion or Decision

Report from the Public Affairs and Government Relations Committee

18. Council approved a recommendation of the Public Affairs and Government Relations Committee to adopt guidelines for the development of positions on policy and government relations issues that reflect the importance of consultation with the law societies and their approval of policy positions and submissions. The guidelines also identify when and how submissions may be made or positions advanced without that approval.

19. Council also approved the Committee’s recommendation that the CEOs Forum be requested to establish a Working Group to review the Federation’s Model No Cash and Client Identification and Verification Rules and issues relating to their application by law societies of their rules and regulations based on those Model Rules. This recommendation was in response to a number of developments on the anti-money laundering and counter-terrorist financing landscape in recent years that raise a mix of strategic, policy, technical and operational issues and that will require specific expertise and knowledge to address.

National Committee on Accreditation (NCA) Program Review

20. The Council approved the outline for a comprehensive review of the NCA, which includes the structure, process and timeline for the review.

21. By way of background, following an operational review, conducted in 2008, a number of changes were made to how the NCA carries out its mandate. Those changes resulted in greater satisfaction with the service provided by the NCA. The program review now approved by Council will focus on the effectiveness of the NCA process in yielding candidates who possess the competencies necessary for success in bar admission or
licensing programs and in legal practice. The review will entail a comprehensive review of the policies, processes and governance of the NCA.

Guiding Principles for Federation Committee Composition

22. In keeping with Governance Policy adopted in 2016, the Federation’s Executive Committee provided to Council proposed guidelines and criteria to improve the nomination process for Federation Committees and to make it more transparent.

23. The guidelines include the following principles:
   a. An annual review of committee composition by the newly installed Executive Committee forthwith upon the commencement of its term on November 15 each year, involving a process to obtain expressions of interest from law societies’ benchers, Council members and staff, depending on the particular expertise sought, and recommendations for approval by Council at its December meeting;
   b. Appointments guided by criteria that foster accountability to Council, renewal and leadership succession when considering potential Committee members, and depending on the committee’s mandate, drawing members from Council, law society benchers or staff, and generally replacing former or outgoing Council members, law society benchers and staff, as the case may be;
   c. Appointments guided by criteria that foster accountability to Council and renewal when considering potential Committee Chairs, and generally selecting Committee Chairs from the ranks of the Council for the coming year, and replacing former or outgoing Council members, whether appointed as a committee member indefinitely or for a term.

24. The Executive recognized that these principles should be reviewed periodically and adjusted as the Federation gains experience with the implementation of the new Governance Policy.

CanLII Board Appointments

25. Council approved the appointment of four new members of the board of CanLII, based on recommendations of the CanLII Board Nominating Committee. Replacing Board members Johanne Blenkin, Michael Geist, Brian McLaughlin and Diana Miles, whose terms expire in 2016 and who have indicated their desire not to be reappointed, are Adam Dodek, Crystal O’Donnell, Shannon Salter and Tom Schonhoffer. Dominic Jaar was also appointed as Chair of the Board.

Report of the Interim Finance and Audit Committee

26. Council approved the draft audited financial statements of the Federation for the financial year ending June 30, 2016. The Report also included:
a. operating statements for both the Federation’s general fund and the National Committee on Accreditation (“NCA”) for the financial year ended June 30, 2016;
b. status of the Special Projects Reserve Fund;
c. budget plans for the 2017/18 fiscal year; and
d. status of 2017 CanLII Budget.

2016 National Criminal Law and Family Law Programs

27. The 2016 edition of the National Criminal Law Program (“NCLP”) took place at the Convention Centre in Charlottetown, Prince Edward Island from July 4 to 8, 2016. It was the 43rd consecutive edition of the NCLP, which is held every year in July.

28. The subject matter of this summer’s Program was Substantive Criminal Law, Advocacy, and the Administration of Justice. The Program attracted 682 paid registrants, plus approximately two dozen special guests, and 45 faculty. The group included prosecutors, defence counsel, judges, including several members of appellate courts, and members of the law enforcement and military communities. Registrants and faculty were drawn from across Canada.

29. The 2016 National Family Law Program was held July 11-14, 2016 at the St. John’s Convention Centre in St. John’s, Newfoundland.

30. The program included eight plenary sessions, 32 workshop choices and 3 optional lunch forums (Legal Aid Discussion Group, Child Welfare Discussion Group and Arbitration Discussion Group). The conference ended on Thursday, July 14th with a session entitled Cross Country Check-Up. A practitioner from each province and territory chose a case or issue that is a hot topic in their jurisdiction and presented in an informative and entertaining format. There were 458 registrants including faculty, special guests and complimentary registrations.

Governance Policy Amendments

31. At this instance of the Law Society of Upper Canada, Council approved amendments to the Governance Policy respecting the openness of Federation Council meetings and committee meetings. The Law Society of Upper Canada worked with the Barreau du Quebec to arrive at a mutually acceptable approach to the public nature of Federation Council meetings with the ability to convene in the absence of the public in appropriate circumstances.

32. Amendments to the Governance Policy were made to the provisions that deal with Council meetings (i.e. that they should be held in public subject to certain exceptions) and with committee meetings (i.e. that they will meet in the absence of the public).
Reports for Information

33. The Federation Council received a number of information reports from various committees in a consent agenda. Highlights are provided below.

National Committee on Accreditation

34. The roles of the Committee are to set NCA policy and consider appeals of assessments (eight total in 2015/2016).

35. In January 2015, the committee revised the NCA Assessment Policy, bringing it into compliance with the National Requirement.

36. In 2015-2016, the NCA received 1,718 applications for assessment, an 18% increase. During the same period, 898 Certificates of Qualification have been issued. Approximately 5,500 exams were written. Exams are offered in Canadian cities (Vancouver, Calgary, Edmonton, Regina, Winnipeg and Toronto) and sites abroad, with typically 20-30 sites for each exam session.

37. As noted earlier in this report, Council approved a comprehensive program review of the NCA.

Canadian Common Law Program Approval Committee

38. The Canadian Common Law Program Approval Committee (the “Approval Committee”), is mandated to assess Canadian common law programs to determine whether they comply with the National Requirement that graduates must meet for entry into the Canadian bar admission or licensing programs.

39. There are currently 20 law schools with approved programs, and one (Trinity Western University) with preliminary approval. In addition, there are 55 joint programs (a law program combined with a non-law program), 10 dual programs (two law programs from different institutions), and six one year programs for graduates of civil law programs under consideration for approval.

40. Several other universities are considering opening law schools. The development of the program at Ryerson University is progressing. The proposal for the program at the Memorial University of Newfoundland has been presented to the University Senate. A timeline for the next steps, which would include discussions with the provincial government and formal approval by Memorial’s Senate and Board of Regents, has not been established. The University of Saskatchewan’s College of Law has been selected by
the government of Nunavut to offer a law program for Inuk students starting in September 2017.

41. With respect to TWU, it submitted a proposal to the Federation for a JD program in June 2012. The Approval Committee granted preliminary approval to the program in December 2013. TWU has decided to not proceed with the development of its JD program until the legal challenges are settled. Its website states that it is aiming to open the law school in September 2018.

42. As part of its mandate “to participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level”, the Approval Committee is monitoring changes and challenges within legal education. The committee members see an important role for the Approval Committee in facilitating the flow of communication to and from the law societies and the academy on these issues, and ensuring the issues are on the agendas of both the Federation and the law societies, as required.

National Admissions Standards Project Steering Committee

43. At the June 2016 Council meeting, Federation Council reviewed the recommendation of the National Admission Standards Project Steering Committee that work on the assessment phase of the National Admission Standards Project cease. The memo also sought direction from Council about whether to review the National Competency Profile and continue work on a National Good Character Standard.

4 In 2014 and early 2015, law societies in Alberta, Saskatchewan, Prince Edward Island, Newfoundland and Labrador, New Brunswick, Yukon and Nunavut adopted the committee's decision and/or approved the program. The Law Society of Upper Canada rejected TWU's application for accreditation in April 2014. TWU's May 2014 challenge of this decision was dismissed by Ontario Divisional Court in July 2015. TWU challenged the dismissal in the Court of Appeal and was unsuccessful (June 2016). TWU submitted an application for leave to appeal to the Supreme Court of Canada on September 28, 2016. The Nova Scotia Barristers’ Society rejected TWU’s application in 2014. TWU applied to the Nova Scotia Supreme Court for a judicial review, which was heard in December 2014. In January 2015, the court ruled against the NSBS which then launched an appeal in the Nova Scotia Court of Appeal. The Court of Appeal ruled in favour of TWU (July 2016) following which NSBS decided not pursue an appeal to the Supreme Court of Canada. The Law Society of British Columbia initially approved the TWU program but, following a referendum of its members, it reversed its decision (October 2014). TWU appealed this decision to the BC Supreme Court which ruled in favour of TWU in December 2015. The LSBC filed an appeal with the BC Court of Appeal, The hearing took place in June 2016 and on November 1, 2016, the Court released its reasons and dismissed the appeal. The Law Society of BC has indicated it will seek leave to appeal the case to the Supreme Court of Canada.
44. After discussion, acknowledging that the critical mass of law societies to move this initiative forward had not been reached, there was a general consensus at the June Council meeting to stop work on the assessment phase of the project, to review the National Competency Profile and to resume work on a National Good Character Standard.

45. Once Council decisions are made about prioritizing the ongoing work, steps will be taken to collaborate with law societies and other stakeholders to advance the work.

Standing Committee on the National Discipline Standards

46. The Committee continues to address issues related to the Standards. Council approved revised Standards at its June 14, 2016 meeting and they were circulated to law societies for adoption and implementation. The revised Implementation Guide was also circulated to law societies.

47. After consulting with law society discipline staff, the Committee recommended revisions to Standards 3 and 9. Standard 3 deals with the timeline to resolve or refer a complaint. The changes deal with situations in which the complainant initiates an internal review or internal appeal of the complaint, and situations in which a complaint has been referred back to the investigation stage from an internal review or internal appeal process. Standard 9, which sets out how frequently each law society must report to its governing body on the status of standards 1 through 8, was revised so that reporting on all standards occurs once annually. The updated National Discipline Standards are now available on the Federation website.

48. The Standing Committee is working on several new discipline standards including a standard that would give law societies the ability to take interim steps to protect the public before conviction or while an investigation is ongoing, a standard requiring a process for early resolution of appropriate complaints and a standard on quality measures.

Standing Committee on the Model Code of Professional Conduct

49. The Standing Committee continues to review feedback from law societies, legal organizations, government and academics received in response to the 2016 public consultations on proposed amendments to the rules on competence, dishonesty/fraud and incriminating physical evidence, and a new rule addressing responsibilities that arise when a lawyer leaves a law firm. Final amendments to the Model Code will be shared with law societies in November 2016, and Council will be asked to vote on these amendments in March 2017.

50. In response to its discussion paper on Post-Judicial Return to Practice, the Standing Committee has received feedback from a number of law societies, the CBA and legal ethics academics (including two from Australia). Feedback is also expected from the...
Canadian Judicial Council and the Canadian Superior Court Judges Association. In a departure from its usual practice, the Standing Committee consulted on the issues that arise when a judge leaves the bench and returns to legal practice before deciding whether to propose amendments to the Model Code. If the Standing Committee concludes that amendments to the Model Code should be made, it will follow its regular consultation process to obtain feedback on the proposed amendments.

51. A second discussion paper on fee sharing is in process and will be provided to law societies to stimulate discussion and invite the exchange of ideas on the various issues discussed.

52. The Standing Committee has prepared draft amendments to the Model Code concerning technological competence. The Committee plans to include this in the 2017 consultation package to be shared with law societies in January 2017.

Standing Committee on Access to Legal Services

53. The Federation continues to play an active role in the National Action Committee on Access to Justice in Family and Civil Law Matters (the “NAC”), with President Jeff Hirsch sitting as a member of the NAC Steering Committee.

54. The NAC is preparing for its next annual meeting of representatives of provincial and territorial access to justice committees in March 2017. It is also finalizing a communications plan to build broader engagement and increase alignment amongst the initiatives undertaken by different stakeholders. It hopes to publicly share information between local access to justice committees on a regular basis.

Public Affairs and Government Relations Committee

55. In accordance with its mandate, and as noted previously in this report, the Committee has developed guidelines for the development of positions on policy and government relations issues. The guidelines address consultation and engagement with the law societies, the process for approval of policy positions, and the circumstances in which the Federation may make submissions or provide feedback on an issue without first obtaining the express consent of the law societies.

56. Between August and September, the Committee developed three sets of submissions in response to government consultations on the regulation of intellectual property agents, the judicial discipline process and the process for appointing Superior Court judges.
Working Group on the Truth and Reconciliation Calls to Action

57. Since its inaugural teleconference on May 30, 2016, the Working Group has met on several occasions to discuss its mandate to make a recommendation on the process for developing a response to the Truth and Reconciliation Commission Calls to Action.

58. A recommendation for the Federation to establish a Truth and Reconciliation Commission Calls to Action Advisory Committee with a broad mandate to develop a response to the Calls to Action has been developed and will be before Council for approval at its December meeting.
FEDERATION OF LAW SOCIETIES OF CANADA

COMMITTEE LIST

(proposed as of November 16, 2016)

1. National Committee on Accreditation

   Chair: Herman Van Ommen (until November 2017)

   Members: Miriam Carey (until November 2017)
             Malcolm Mercer (until November 2017)
             Alan Treleaven (until November 2017)
             Dean Camille Cameron (CCLD nomination)
             Dean Bill Flanagan (CCLD nomination)

2. Canadian Common Law Program Approval Committee

   Chair: Steve Raby (until January 2018)

   Members: Morgan Cooper (until January 2017)
             Ross Earnshaw (until November 2019)
             Cori Ghitter (until January 2019)
             Dean Ed Iacabucci (until January 2019)
             Dean Sebastien Lebel-Grenier (until January 2018)
             Lorna Turnbull (until January 2017)

3. Standing Committee on the Model Code of Conduct

   Chair: Kristin Dangerfield

   Members: Naomi Bussin
             Sylvie Champagne
             John Phelps
             Darrel Pink
             Richard Scott
             David Swayze
4. **Standing Committee on National Discipline Standards**

   Chair: Greg Walen

   Members: Deb Armour
   Guy Bilodeau
   Lynn Daffe
   Irene Hamilton
   Karen Manarin
   Elizabeth Osler
   Victoria Rees
   Phyllis Weir

5. **National Requirement Review Committee**

   Chair: Peter Wardle

   Members: Trevor Farrow
   Kevin Feth
   George Filliter
   Diana Miles
   Herman Van Ommen
   Shauna Van Praagh
   Steve Raby (ex officio)

6. **Public Affairs and Government Relations Committee**

   Chair: Sheila MacPherson

   Members: Morgan Cooper
   Rene Gallant
   William MacDowell
   David Swayze
   Bernard Synnott
   Greg Walen
7. **Litigation Committee**

   Chair: John Phelps

   Members: John Callaghan  
             Sylvie Champagne  
             Kris Dangerfield  
             Stephen McKnight  
             Greg Walen  
             Karen Wilford

8. **Finance and Audit Committee**

   Chair: Steve Raby (until November 2017)

   Members: Sheila MacPherson (until November 2017)  
            Richard Scott (until November 2018)  
            Rob Lapper (until November 2018)  
            Lise Tremblay (until November 2018)

9. **Working Group on TRC Calls to Action**

   Chair: Shannon Cumming

   Members: David Crossin  
            Dianne Corbière  
            Adam Letourneau  
            Don MacKenzie  
            Sheila MacPherson  
            Bernard Synnott

10. **CanLII Board Nominating Committee**

    Chair: David Swayze (until July 2018)

    Members: Sheila MacPherson (until July 2018)  
             Tim McGee (until July 2018)  
             Diana Miles (until July 2018)  
             Richard Scott (until July 2018)