



**Tab 9**

**Report to Convocation  
May 26, 2016**

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**Report on the Federation of Law Societies of Canada  
Council and Related Meetings, Banff  
March 9-11, 2016**

**Purpose of Report: Information**

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## FOR INFORMATION

# COUNCIL AND RELATED MEETINGS OF THE FEDERATION OF LAW SOCIETIES OF CANADA

## 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.
2. The Federation additionally 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.
3. More information about the Federation can be found on its website at [www.flsc.ca/](http://www.flsc.ca/).
4. 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.
5. Treasurer Janet Minor, Federation Council member Laurie Pawlitzka, CEO Robert Lapper, Grant Wedge and Jim Varro attended the Banff meetings held from March 9 to 11, 2016. This report provides highlights of the meetings.

## COUNCIL MEETING

6. The Council met on March 10 and 11, 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.

## Reports for Discussion or Decision

### Report from the Federation Executive on the Calls to Action of the Truth and Reconciliation Commission

7. In its Calls to Action issued last year, the Truth and Reconciliation Commission (“TRC”) called upon the Federation “to ensure that lawyers receive appropriate cultural

competency training” addressing the Indian Residential Schools legacy and key elements of Aboriginal law.<sup>1</sup>

8. At the Federation’s conference in Winnipeg in the fall of 2015, which included a focus on the Calls to Action, there was consensus among the conference participants that responding to the Calls to Action must be meaningful and prompt, and include direct collaboration with Indigenous peoples from the outset. The Federation Executive noted at the Banff meeting that although individual law societies have begun to consider how to respond to the Calls to Action, the direct appeal to the Federation suggests the need for a national response.
9. Following an in-depth discussion of the Calls to Action, the Council voted to establish a working group to develop recommendations on how best to effectively respond to the Calls to Action. The Council resolution included a commitment to a process that engages representatives of Indigenous peoples. The Federation will also ensure that its work will complement the ongoing work of law societies across the country on the Calls to Action.

#### Report of the Governance Review Committee

10. In June 2014, Federation Council approved the creation of a Governance Review Committee to conduct a governance review of the Federation. The Committee includes the Law Society of Upper Canada’s Robert Lapper, as well as Marie-Claude Bélanger-Richard, Federation President (Chair), Jeff Hirsch, Federation 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.
11. The Committee carried out extensive consultations and meetings with law society leaders, former Council members, Federation Presidents, as well as some current and former Federation Committee members.
12. Following its status report to the Winnipeg meeting in the fall of 2015, the Committee continued its work and prepared a draft of proposed Governance Policies. The Policies were prepared to, among other things, clarify roles, responsibilities and processes and to render Federation governance more transparent and efficient. The Committee sought and received feedback on a number of issues contained in the Policies from various law societies, including the Law Society of Upper Canada.

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<sup>1</sup> Recommendation 27 states: We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

13. The Committee's report to the Banff meeting included a revised proposed draft of the Policies. The Committee's report noted that in its view, the proposed Policies will mark a significant improvement in how the Federation goes about its business and serves the interests of its members. The revised Policies, in addition to reflecting a small number of drafting refinements, include changes intended to provide greater clarity on a number of issues, including the effect of Council votes, membership in a Nominating Committee (as proposed), the distribution of documentation for Council meetings and attendance at Council.
14. Council engaged in a substantial discussion of the report and the draft Governance Policies. Council adopted the proposed Policies, on the understanding that provisions relating to who may attend Council meetings and the transparency around meetings will be further refined and clarified before being presented for adoption in the Policies.

#### Report on Strategic Planning

15. Recognizing the importance to the Federation of being guided by a Strategic Plan and an Annual Activity Plan, the Federation President reported to Council that, in the Executive's view, the governance review process that has been underway since early 2015 provides the impetus to take a fresh look at what should be the Federation's strategic priorities for the next few years. The Federation last engaged in a full strategic planning process in 2008 and has been guided by a Strategic Plan that was reviewed in a summary way every year since then.
16. At the Council meetings in October and December 2015, the consensus was that strategic planning should await the completion of the governance review process, which is imminent. The view was also expressed that the meaningful engagement and buy-in of all of the Federation's leadership constituencies - the elected leadership of Canada's law societies, their CEOs and senior staff, the Federation Council and the Federation's senior staff - will be important to the success of this planning exercise.
17. To this end, Council received reports from the Presidents' Forum and the CEOs' Forum, both of which met prior to Council, where issues of mutual interest to the Federation and Law Societies were discussed. The CEOs' Forum included a session in which an environmental scan was undertaken of the myriad issues, developments and challenges relevant to the world of legal services regulation.
18. These reports helped to inform Council on issues important to strategic planning for the Federation. Next steps include receiving from law society CEOs briefing papers on the key initiatives in their jurisdictions and an exchange through the Federation of strategic plans that law societies have created for their own organizations.

### Report of the Interim Finance and Audit Committee

19. At the Winnipeg meetings in the fall of 2015, the Federation Council approved the establishment of the Interim Finance and Audit Committee. The members of the Committee are: Marie-Claude Bélanger-Richard, Q.C, Jeff Hirsch, Gavin Hume, Q.C. Steve Raby, Q.C. Robert Lapper, Q.C. and Lise Tremblay.
20. The Committee provided its report on the operating statements for the Federation's general fund and the National Committee on Accreditation ("NCA") for the first half of the 2015-2016 financial year, and presented for decision the 2016-2017 budgets for the Federation, the NCA and the 2016 budget for Canlii.
21. Council agreed to defer the decision on approval of the Federation budget and associated law societies levy and NCA budget to permit the Law Society of Upper Canada to review these budgets. It is anticipated that these matters will be returned to the Federation's June 2016 Council meeting.
22. Council approved the Canlii budget for 2016 in the amount of approximately \$3.3million, based on the CanLII Board's recommendation to Council with respect to the fees to be paid to CanLII by the law societies in order to fund its activities.<sup>2</sup>

### Standing Committee on the Model Code of Professional Conduct

23. 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 Naomi Bussin, Senior Counsel Professional Regulation, serves on the Standing Committee.
24. Council approved the report from the Standing Committee that included proposed amendments to the rules on communicating with witnesses, the duty to report, errors and omissions, and language respecting equity seeking groups. These rules amendments will now be referred to law societies for consideration for adoption in their rules or codes of professional conduct.

### National Committee on Accreditation (NCA) Proposed Program Review

<sup>2</sup> The portion of fees payable by law societies is as follows:

- the sum of \$39.24 per FTE to be paid by all law societies other than the Barreau du Québec and the Chambre des notaires du Québec;
- the sum of \$26.24 per FTE to be paid by the Barreau du Québec; and
- the sum of \$16.77 per FTE to be paid by the Chambre des notaires du Québec.

25. The NCA is a standing committee of the Federation. Established in 1977 through the joint efforts of the Federation and the Council of Canadian Law Deans (“CCLD”) as the Joint Committee on Accreditation, it is responsible for the assessment of the legal training and professional experience of internationally trained lawyers and students and graduates of Canadian civil law programs who wish to enter the bar admission program in any of the Canadian common law jurisdictions. Bencher Malcolm Mercer serves on the NCA.
26. At its request, Council received a report from Federation CEO Jonathan Herman on options for reviewing the policy, governance and operations of the NCA. The report following preliminary input received from the Chair of the NCA, Graeme Mitchell, and a number of law society senior staff across the country.
27. In assessing the options, the Council was of the view that a review that looks at the full range of issues relating to the NCA including its governance, the standard against which candidates are assessed, training and preparation of candidates and appropriate testing mechanisms, was appropriate.
28. The Council determined that this was a priority. It directed that work begin on the scope of review and that the matter be returned to Council in June 2016 for further consideration.

#### National Mobility Database

29. The Council, at its request, received a report from CEO Jonathan Herman on development of a plan to make enhancements to the current interjurisdictional database of law societies’ membership to ensure that it is more effective and functional.
30. Under the National Mobility Agreement (“NMA”), a lawyer called to the bar in one common law province may provide legal services temporarily (up to 100 days) in or with respect to the law of another common law province without a permit or notice to the host law society, provided certain conditions are met. Those conditions include requirements to be in good standing in the lawyer’s home jurisdiction, have an unrestricted right to practise, not be subject to any disciplinary proceedings, and have no disciplinary record in any jurisdiction. To ensure that a lawyer’s eligibility to practise temporarily in another jurisdiction could be easily ascertained, the NMA mandated the creation of an interjurisdictional database for use by law societies.
31. Council agreed that there is a need to ensure the currency and accuracy of the information the database contains, that it is supported by the appropriate technology and that consistency in the information presented in the database is achieved. Council agreed that enhancements to the database should be pursued. It determined that the Executive should meet to discuss creating the appropriate group among the law societies’ CEOs and senior staff to perform the necessary work and engaging expertise for the project as appropriate.

### Council Liaison with CanLII Board of Directors

32. The Council determined that it was desirable to establish a liaison to provide a link between the Board of Directors and management of CanLII, and the Federation and Canada's law societies for the purpose of facilitating two-way and multilateral communication among the parties about matters of strategic importance relating to CanLII.
33. CanLII operates within a professional management structure led by a full time President and CEO employed by a skills-based Board of Directors. The Federation is the sole member designated to act as an agent of the law societies for the purpose of collecting the fees that fund CanLII's operations. The ultimate oversight function with respect to CanLII's Board of Directors, strategic plan, budget and funding requirements, remains with Canada's law societies acting through the Federation. The CanLII Board is currently working with CanLII's President and CEO, Xavier Beauchamp Tremblay, to develop a new strategic plan for the consideration of the Federation and the law societies.
34. To ensure an appropriate connection between CanLII and its funders, the Council believes it is appropriate that communications relating to the strategic priorities of CanLII take place in a structured and effective manner. Council approved the position of Council liaison to CanLII and requested that the Executive designate a member of Council to be the liaison.

### **Information Reports**

35. Council received a number of reports for information, as noted below.

### CanLII Semi-Annual Report

36. Martin Felsky, the Chair of CanLII Board of Directors, provided a report on CanLII's activities and its audited financial statements for 2015, including the Auditor's Report on the financial statements. Diana Miles serves on the CanLII Board.
37. The report noted, as indicated earlier, that CanLII is currently undergoing a review of its strategic plan. The CanLII board has appointed a working group for this purpose.
38. Since the fall of 2015, CanLII has worked on:
  - a. making design changes to the CanLII.org interface to declutter the search page and make references to CanLII Connects more visible, which has significantly boosted the number of new CanLII Connects visitors and users at the end of 2015 and in early 2016;
  - b. rolling out features to improve the user experience in the search results pages, including infinite scrolling and the ability to toggle between full or compact display of search results;

- c. reorganizing the jurisdiction-specific pages where the growing list of databases made it increasingly difficult to promptly identify more important databases (i.e. courts and major administrative tribunals);
  - d. adding Federal and Quebec Annual Statutes as part of a project funded by the Centre d'accès à l'information juridique (CAIJ); and
  - a. revamping its blog to provide more regular updates to users.
39. CanLII looks forward to undertaking projects that will come within a new strategic plan. It will continue to look for improvements and opportunities to expand CanLII content and services in ways that could support greater reliance on CanLII by legal professionals.

#### National Committee on Accreditation (NCA)

40. The NCA's mandate was noted earlier in this report.
41. The role of the committee includes considering appeals of assessments (three to date in 2015-2016).
42. Recent activities have included the following:
- a. In January 2015, the committee revised the NCA Assessment Policy, bringing it into compliance with the National Requirement;
  - b. The NCA has received 1,030 applications for assessment to date in 2015/2016; during the same period, 641 Certificates of Qualification have been issued;
  - c. In January 2016, 1,520 exams were written in 16 Canadian cities (includes Vancouver, Calgary, Edmonton, Regina, Winnipeg, & Toronto) and seven sites abroad;
  - d. The NCA Chair is an observer and participant on the National Requirement Review Committee and will be providing input from the perspective of the NCA.

#### Canadian Common Law Program Approval Committee

43. Laurie Pawlitz, Treasurer Emeritus of the Law Society is Chair of the Canadian Common Law Program Approval Committee (the "Approval Committee"), which is mandated to assess Canadian common law programs to determine whether they comply with [the National Requirement](#) that graduate must meet for entry into the Canadian bar admission or licensing programs.
44. Approval Committee members are:
- a. Morgan Cooper - former President, Law Society of Newfoundland and Labrador;
  - b. Stephen G. Raby, Q.C. - Council member representing the Law Society of Alberta;
  - c. Cori Ghitler - Director of Professionalism and Policy, Law Society of Alberta;
  - d. M. Iacobucci - Dean, University of Toronto, Faculty of Law;



- e. Sébastien Lebel-Grenier - Dean, Université de Sherbrooke; and
  - f. Lorna Turnbull - Dean, University of Manitoba
45. The committee met in January 2016, to discuss various issues including the evaluation of learning resources, a key issue for the committee due to challenges in evaluating facilities, libraries, etc. without visits to the schools and given the variation in funding, size, and organization of Canadian law schools.
46. The committee welcomed Federation President Jeff Hirsch and National Requirement Review Committee (“NRRC”) Chair Tom Conway to the meeting and took advantage of their presence to have a fruitful discussion on various policy issues related to the Approval Committee and the NRRC.
47. The committee previously met in June 2015 to evaluate 20 law school reports. As required in the Approval Committee’s iterative process, initial feedback and questions were sent to the law schools in the summer and all schools were responsive.
48. There are currently 19 law schools with approved programs, and two (Lakehead University and Trinity Western University) with preliminary approval. There are 19 three-year JD programs, 53 joint programs, nine dual programs, and seven one-year civil law programs, for a total of 88. Lakehead’s first class will be graduating in spring 2016 and the committee will be considering full approval of the program in late winter.
49. In keeping with its mandate, the committee is monitoring changes and challenges within legal education. The committee members see an important role for the committee in facilitating the flow of communication to and from the law societies and the academy on these issues, and in ensuring that both the Federation and the law societies are aware of the issues.

#### National Requirement Review Committee

50. The National Requirement Review Committee was established by the Council of the Federation to undertake two primary tasks: 1) perform an initial review of the National Requirement that graduates of all Canadian common law programs must meet to be eligible to enter law society bar admission or licensing programs; and 2) consider whether a non-discrimination provision should be added to the National Requirement and if so in what form.
51. The following serve on the committee:
- a. Thomas G. Conway, Federation Past 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 (Law Society of Upper Canada)

52. The committee is planning two meetings this spring, the first to consider input from the Approval Committee on the list of issues relating to the initial review of the National Requirement, and the second to continue discussions on the possible addition to the National Requirement of a non-discrimination provision and to develop a plan for consultation on that issue.

#### National Admission Standards Project (NASP)

53. The National Admission Standards Steering Committee, as part of the National Admissions Standards Project (“NASP”), provides strategic direction for the development and implementation of the national standards for admission to the legal profession.

54. The committee is comprised of:

- a. Don Thompson, Q.C., Executive Director, Law Society of Alberta, Chair;
- b. Bâtonnière Marie-Claude Bélanger-Richard, Q.C., Federation past president and former Bâtonnière, Law Society of New Brunswick;
- c. Allan Fineblit, Q.C., former CEO, Law Society of Manitoba;
- d. Jeff Hirsch, President, Law Society of Manitoba;
- e. Robert Lapper, CEO, Law Society of Upper Canada;
- f. Tim McGee, Q.C., CEO, Law Society of British Columbia;
- g. Diana Miles, Executive Director, Organizational Strategy / Professional Development and Competence, Law Society of Upper Canada;
- h. Laurie Pawlitza, Council member and past Treasurer, Law Society of Upper Canada;
- i. Darrel Pink, Executive Director, Nova Scotia Barristers’ Society;
- j. Bâtonnier Bernard Synnott, Barreau du Quebec;
- k. Alan Treleaven, Director, Education and Practice, Law Society of British Columbia;
- l. Lise Tremblay, CEO, Barreau du Quebec; and
- m. Jonathan Herman, Federation CEO.

55. In 2013, law societies adopted the National Competency Profile, which describes the competencies required of new lawyers and Quebec notaries. Throughout 2014, members of the committee met with law societies to discuss options for assessing the competencies in the profile.

56. The committee’s assessment proposal was circulated to law societies and members of Council in the fall of 2015. The proposal provides a vision and structure for moving forward with the development of a national qualifying assessment system for admission. The proposed assessment system aims to provide an appropriate degree of consistency in how law societies assess the competencies in the National Competency Profile, given

the mobility of the legal profession today. It is aimed at helping law societies meet their public interest mandate through consistent, defensible and high standards for admission to the legal profession.

57. With input received at the Federation's December 2015 Council meeting from various Council members who reported on the views within their law societies about the proposal and their readiness for next steps, and pending receipt of feedback from all law societies on the assessment proposal, the committee will meet to discuss the National Good Character Standard and a process and timeline for review of the National Competency Profile.

#### Standing Committee on National Discipline Standards

58. The mandate of the Standing Committee is to facilitate implementation of the national standards established for law society handling of complaints and discipline matters ("National Discipline Standards") and to make recommendations to Council for amendments to the National Discipline Standards from time to time as necessary.
59. The members of the committee are:
- a. Alan Fineblit, Q.C. Chair (Counsel, Thompson, Dorfman Sweatman LLP and former CEO, Law Society of Manitoba);
  - b. Deb Armour (Chief Legal Officer, Law Society of British Columbia);
  - c. Guy Bilodeau (syndic, Bureau du syndic du Barreau du Québec);
  - d. Lynn Daffe (Executive Director, Law Society of Yukon);
  - e. Elizabeth Osler (Deputy Executive Director & Director, Regulation, Law Society of Alberta);
  - f. Victoria Rees (Director, Professional Responsibility, Nova Scotia Barristers' Society);
  - g. Greg Walen Q.C. (Council Member representing the Law Society of Saskatchewan);
  - h. Phyllis Weir (Legal Director, Law Society of Newfoundland and Labrador); and
  - i. Irene Hamilton, Public Representative (Director of Justice Innovation, Department of Justice (Manitoba)
60. The committee continues work on a number of initiatives, including:
- a. a proposal for a voluntary peer review pilot project,
  - b. a proposed new standard on early resolution of complaints,
  - c. a proposal for a new standard for the ability to impose interim measures,
  - d. a proposal for standards to measure quality of discipline work, and
  - e. some resources for law societies implementing Standard 16 (information sharing).
61. The Adjudicator Training Working Group (ATWG) continues to work on the design of a national training curriculum for law society adjudicators.

62. The committee has completed several communication documents which will be distributed to law societies soon, along with updated versions of the National Discipline Standards and the Implementation Guide.

Standing Committee on the Model Code of Professional Conduct

63. The mandate of the Standing Committee was noted earlier in this report. Its members are:
- a. Gavin Hume Q.C., Chair - Council member representing the Law Society of British Columbia
  - b. Stephen G. Raby, Q.C. - Council member representing the Law Society of Alberta
  - c. Sheila H. Greene, Q.C. - Council member representing the Law Society of Newfoundland and Labrador
  - d. Naomi Bussin - Senior Counsel, Professional Regulation, Law Society of Upper Canada
  - e. Sylvie Champagne - Secrétaire de l'Ordre, Barreau du Québec
  - f. Kris Dangerfield - Chief Executive Officer, Law Society of Manitoba
  - g. Darrel Pink - Executive Director, Nova Scotia Barristers' Society
64. The committee continues its work on post-judicial return to practice and fee sharing and referral fee rules.
65. The most recent consultation package on proposed amendments to the Model Code was released on January 30, 2016. The package, which includes 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, was sent to law societies, the Canadian Bar Association, and the Department of Justice. It was also circulated to the legal ethics community through the listserv operated by the Canadian Association for Legal Ethics and was posted on the Federation's public website. The consultation is open until June 30, 2016.
66. The committee has established a fixed schedule for consultations and amendment packages in response to requests from the law societies. Consultation packages will be released on January 30 of each year, with feedback due by June 30. The committee will review the feedback and finalize the proposed amendments by November 1, with a view to circulating them to Council and the law societies by November 30 for a vote by Council at its spring meeting.

Standing Committee on Access to Legal Services

67. The Standing Committee on Access to Legal Services 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.
68. The Committee members are:
  - a. Jeff Hirsch, Chair - President of the Federation of Law Societies of Canada
  - b. Kevin Feth, Q.C. - Former President, Law Society of Alberta
  - c. Sheila H. Greene, Q.C. - Council Member representing the Law Society of Newfoundland and Labrador
  - d. Bâtonnier Nicolas Plourde, Ad.E. - Former Bâtonnier, Barreau du Québec
  - e. Bâtonnier Richard J. Scott, Q.C. - Council Member representing the Law Society of New Brunswick
  - f. Robert Lapper, Q.C. - Chief Executive Officer, Law Society of Upper Canada
  - g. Tim McGee, Q.C. - Chief Executive Officer and Executive Director, Law Society of British Columbia
  - h. Darrel Pink - Executive Director, Nova Scotia Barristers' Society
  - i. Nalini Vaddapalli - Chief Executive Officer, Law Society of Nunavut
69. The Standing Committee is focusing on possible access initiatives to feed into the larger Federation strategic planning work planned for 2016.
70. The Standing Committee chair and Federation President Jeff Hirsch continues to play an active role as the Federation's appointee to the National Action Committee on Access to Justice in Family and Civil Law Matters (the "NAC"). The meetings of NAC provide an opportunity for representatives of the provincial and territorial committees to share their greatest achievements and challenges and to discuss plans for ongoing information sharing as well as the possibility of holding an innovation roundtable.