

*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
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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, appearing to read "Brent Cotter". The signature is fluid and cursive, with the first name "Brent" and the last name "Cotter" clearly distinguishable.

W. Brent Cotter, Q.C.

Professor and Dean
College of Law
University of Saskatchewan

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Council of Canadian Law Deans

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