Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

TASK FORCE ON THE CANADIAN COMMON LAW DEGREE

CONSULTATION PAPER

SEPTEMBER 2008

The views expressed in this consultation paper are presented by the Task Force for consideration and discussion. They 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

Law societies and law schools in Canada lie at an interesting crossroad. Law schools, some of which began in law societies, have become increasingly separated from them, and guard their academic autonomy. Law societies, now clearly focused on regulating entry to the profession in the public interest, and influenced by regulatory regimes that require transparency and objectivity in the standards for entry to the profession, see a need for greater specificity in what constitutes a Canadian common law degree for purposes of entry to the profession.

The Federation of Law Societies of Canada established this Task Force in June 2007 to review the criteria in place for the approved common law degree and, if appropriate, to recommend modifications to achieve a national standard for recognition of an approved common law degree for entry to the profession.

In Canada the 14 provincial and territorial law societies have statutory responsibility for licensing lawyers. For many years law societies in the common law provinces have carried out this responsibility by requiring candidates for admission to the bar to have earned a Canadian common law degree or its equivalent, to successfully complete a law society bar admission program and to complete a period of apprenticeship known as articles.

In the past two years, a number of events have converged to focus law societies' attention on the lack of an articulated academic requirement for entry into their bar admission programs:

- After more than 25 years in which no new law schools were created in Canada and there was very little increase in law school seats throughout the country, several universities in Ontario indicated an interest in creating law faculties. The immediacy of this issue has receded with the Ontario government's announcement that it will not fund new schools at this time, but there is still the possibility of new law schools emerging in other provinces. Moreover, the importance of articulating a national standard remains. The portability of legal credentials should be based on clear and transparent principles. The absence of

an accepted national standard in Canada stands in marked contrast to the approach taken in other common law jurisdictions.

- The number of graduates of international law schools who apply for admission to law society bar admission programs has steadily increased over the past twenty years. The National Committee on Accreditation ("NCA"), a subcommittee of the Federation of Law Societies of Canada, evaluates the legal training and professional experience of persons with international or Canadian non-common law legal credentials who wish to be admitted to common law bars in Canada. The articulation of a national standard for domestic common law degrees would facilitate the assessment of equivalency of international law degrees and improve the transparency of the process.

- Legislation in Ontario and Manitoba, and under discussion in Nova Scotia, requires self-governing professions to develop and maintain requirements for entry to the profession that are transparent, objective, impartial and fair, and will monitor compliance.

- While these challenges have been unfolding, a number of legal educators have proposed innovative approaches to the teaching of law, including greater integration of practical and theoretical instruction, particularly in third year.

Law societies in Canada regulate in the public interest. Among their other responsibilities they must develop standards of competence for members of the profession. They must ensure that candidates for entry into law society bar admission programs meet required standards for the practice of law. They must articulate and implement those standards in ways that are transparent, objective, fair and impartial.

Required Standard

The Task Force has considered how to articulate a required standard. Its preliminary view is that the standard should address competencies in fundamental areas of substantive knowledge, legal skills and professional responsibility. It should refer to the legal education environment in which those competencies have been acquired. Candidates who seek entry into law society bar admission programs should have

acquired a comprehensive legal education that provides them with framework competencies, including a heightened awareness of professional ethics and conduct, and an understanding of the operation of those competencies in the Canadian legal system, to prepare them for the practice of law.

No single stage of a lawyer’s development can be expected to fill all or even most of the lawyer's educational needs. 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. The bar 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. Law school must continue to be that vital component of the lawyer's education that provides the framework knowledge, skills, attitudes and capacity for reflection that enable its graduates to move into myriad lawyering roles.

Framework Competencies

The Task Force seeks comment on its preliminary view (set out in italics below) of framework competencies that graduates seeking to enter law society bar admission programs should have acquired in law school. The Task Force also seeks comment on its preliminary view that law students should be required to take a mandatory stand-alone course in professional responsibility that addresses both the broad principles of professionalism and the ethical issues with which lawyers must contend throughout their careers, including in areas such as conflicts, solicitor client privilege, and the lawyer's relationship with the administration of justice.

Graduates seeking entry into law society bar admission programs in common law jurisdictions in Canada should be able to demonstrate education in the following competencies and have an understanding of their operation in the Canadian legal system:

- *Foundations of 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;*

    - *Criminal law; and*
    - *Civil Procedure.*
- *The constitutional law of Canada, including principles of human rights and Charter values.*
- *Equitable principles, including fiduciary obligations, trusts and equitable remedies.*
- *Business organization concepts.*
- *Principles of statutory analysis and of regulatory and administrative law.*
- *Dispute resolution and advocacy skills and knowledge of their evidentiary underpinnings.*
- *Legal research skills.*
- *Oral and written communication skills* specific to law.
- *Professional responsibility.*

Institutional Requirements

Modern Canadian law schools provide an excellent liberal legal and professional education. Law is an intellectual discipline and the practice of law requires rigorous academic training as well as practice skills. It is important to consider and articulate those institutional requirements that should form part of the required standard for entry into law society bar admission programs. The Task Force has considered and invites comment on four specific institutional requirements related to,

- law school admission requirements;
- length of law school program;
- program delivery; and
- joint degrees.

The issue of comprehensive legal education is also relevant to a discussion of proposals for law society recognition of the law degrees of graduates from new law schools for the purposes of entry into bar admission programs. There are a number of characteristics and underpinnings essential to the development and maintenance of an effective law school environment. The Task Force seeks comment on whether a national body should be established to develop the components for recognition of new law school law degrees.

Compliance Requirements

Once a required standard is articulated, law societies must consider how to monitor compliance. The Task Force has examined three possible compliance options:

- The "status quo" option.
- The examination option.
- The approved law degree option.

Under the “status quo” law societies have not monitored law school curricula. Students with a degree from one of the 16 Canadian common law faculties are automatically eligible for admission into law society bar admission programs. The argument in favor of this option is that under it Canadian law schools have developed into sophisticated institutions that promote innovation and are capable of adapting to changing needs of the legal profession. Multiple internal and external university reviews obviate the need for an additional layer of law society review. One of the arguments against this option is that regardless of how rigorous university evaluation structures are, universities and law societies have different mandates and define their mission differently. The option does not give weight to the responsibility law societies have to determine the academic requirements that are necessary to practice law.

Under the examination option, graduates seeking to enter law society bar admission programs would first be required to successfully complete a national examination designed to test their competence in the areas that regulators designate as essential. A passing grade would be the measurement that the student has met the competence standard.

This option appears to be transparent and objective, easily developed and applied nationally, and entirely within the control of law societies. Potentially it may apply to both domestically and internationally educated candidates seeking entry into a bar admission program.

There is the danger, however, that examinations such as this come to “drive” the legal education process. Examination success may primarily denote the ability to write examinations, rather than proof of the acquisition of the knowledge, skills and abilities

that a lawyer requires to practise law. It is also necessary to consider carefully the prerequisite education necessary to be entitled to write the examination.

Under the approved law degree option a required standard would be established (such as along the lines described above) and law faculties would demonstrate how their graduates achieve the required competencies. If the degree is approved, any student with a law degree from that school would be eligible to enter bar admission programs. What would differentiate this option from the current automatic approval of all graduates from the 16 common law faculties would be the establishment of a more modern, articulated standard and a national monitoring process. This approach offers certainty to both law schools and their graduates that the degree will be recognized for the purposes of entrance into bar admission programs. It satisfies law societies' responsibility for admission standards through regular monitoring, but continues to allow for significant flexibility in how law schools meet the standards. From the perspective of law faculties, however, it increases external reviews of their programs. Also, it entails the establishment of a national compliance body, with resource implications.

Consultation Process

With the approval of the Federation Council for consultation, the Task Force is disseminating this consultation paper nationally for comment. It will receive written comments until December 15, 2008. Thereafter it will prepare a final report and recommendations for Federation Council in the spring of 2009.

Comment is invited on some or all of the following questions or on any aspect of the issues raised in this consultation paper:

1. Does the suggested list of foundational competencies encompass those that candidates for entry to bar admission programs should possess?

2. Is it over or under-inclusive?

3. Is a stand-alone course on professional responsibility an appropriate requirement for candidates seeking entry to bar admission programs?

4. Should the existing prerequisite for entry into Canadian common law faculties of two years of post-secondary education in a university setting be maintained or should it be changed to reflect the *de facto* requirement of an undergraduate university degree?

5. If so, should McGill's tradition of admitting students following completion of a two-year CEGEP program be accommodated as an exception to the general prerequisite?
6. Are there other exceptions that should be recognized and accommodated?
7. Should the standard length for the common law degree be expressed in terms of credit hours rather than years of study?
8. If so, is 90 credit hours the appropriate standard?
9. Should in person learning be required for all or part of the law school program?
10. Are there other delivery systems that should be taken into account?
11. How should joint degree programs be treated for the recognition of the common law degree?
12. Should a national body monitor joint degree programs?
13. Should a national body be established to develop the components for recognition of law degrees from new law school programs?
14. Are there alternatives to this approach?
15. The Task Force has identified three possible compliance models. Please provide comments on these models.
16. Are there other models that should be considered and if so, what are they?

TASK FORCE ON THE CANADIAN COMMON LAW DEGREE
CONSULTATION PAPER

Introduction

1. Law societies and law schools in Canada lie at an interesting crossroad. Law schools, some of which began in law societies, have become increasingly separated from them, and guard their academic autonomy. Law societies, now clearly focused on regulating entry to the profession in the public interest, and influenced by regulatory regimes that require transparency and objectivity in the standards for entry to the profession, see a need for greater specificity in what constitutes a Canadian common law degree for purposes of entry to law society bar admission programs. Beyond and within Canada, there is much discussion and debate about innovation in the education of lawyers, and the right balance between theory and practice.

2. The Federation of Law Societies of Canada ("the Federation"), through its Task Force on the Canadian Common Law Degree, seeks an approach that ensures that candidates for entry into law society bar admission programs[1] meet required standards for the practice of law, in the public interest.

The Role of Law Societies in Legal Education

3. In Canada, the 14 provincial and territorial law societies have statutory responsibility for licensing lawyers.[2] Law societies in the common law provinces carry out this responsibility by requiring candidates for admission to the bar to have earned a Canadian common law degree or its equivalent, to successfully complete a law society bar admission program and to complete a period of apprenticeship known as articles. Currently, the successful attainment of a Canadian common law degree[3] satisfies the regulators' academic requirement.

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[1] The term "bar admission program" includes what is known as the "licensing process" of the Law Society of Upper Canada.

[2] Law Society of British Columbia, Law Society of Alberta, Law Society of Saskatchewan, Law Society of Manitoba, Law Society of Upper Canada, Barreau du Québec, Chambre des notaires du Québec, Law Society of New Brunswick, Barristers' Society of Nova Scotia, Law Society of Prince Edward Island, Law Society of Newfoundland and Labrador, Law Society of Yukon, Law Society of the Northwest Territories, Law Society of Nunavut.

[3] In some provinces, the academic requirement is expressed simply as "a Canadian common law degree" (e.g. Alberta 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

The bar admission and articling stages provide practical training for the practice of law.

4. To assess the academic qualifications of persons who receive their legal training outside Canada, the Federation has established the National Committee on Accreditation ("NCA") to assess equivalency of legal education. 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 into a bar admission program. **Appendix 1** contains a summary of the NCA process.

5. The development of the concept of an approved Canadian law degree was in large part the result of the debate in Ontario in the 1940's and 1950's over control of legal education in Ontario. 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 of the old Osgoode Hall Law School to 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 grant approval for the law degrees of all 16 Canadian common law faculties for entry into 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**.

6. The original standard set by the Law Society of Upper Canada prescribed eleven mandatory courses and a number of additional courses that "approved law schools" were required to offer. In 1969, as a result of a request by the

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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 – ww.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.).

Ontario Law Deans for greater flexibility in program development, the Law Society reduced the number of required courses from eleven to seven. A copy of the 1957/69 Law Society of Upper Canada document is set out at **Appendix 3**.

7. Neither the Law Society of Upper Canada nor any other law society appears to have updated the statement of requirements for "an approved law course in an approved University" since the 1969 modification of the 1957 requirements. There has never been a national standard for the approval of law programs or law schools.

8. In 1976, 1979 and 1980 three new law schools opened their doors at Victoria, Calgary and Moncton, respectively. 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.

9. For example, the Credentials Committee of the Law Society of British Columbia reviewed the curriculum of the University of Victoria law faculty in February 1975 and passed a resolution to “approve the curriculum” and “recognize the LL.B. degrees” of that institution.[4] It took similar steps in relation to the other new law faculties in Canada.[5] On the other hand, during the same period the Law Society of British Columbia rejected an application for recognition by University College at Buckingham, England on the basis that the courses in that program were not as comprehensive as would be expected in a Canadian program and the course of study was not comparable in duration to a Canadian degree.[6]

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[4] Minutes of the Credentials Committee, Law Society of British Columbia, February 17, 1975.
[5] Minutes, *ibid.*, May 17, 1976; Nov. 14, 1978; June 18, 1979. The Law Society of Upper Canada’s Legal Education Committee considered the University of Calgary’s proposal for a faculty of law in 1976. In June 1976 it advised that it was satisfied with the first year curriculum, but wished to see the curriculum for the second and third years. In April 1979 the Committee approved the proposal “with a rider that the Faculty of Law of the University of Calgary be advised that the Law Society has a concern that Personal Property is not included in the curriculum as an area of law that all students are required to study and that the Law Society would like assurance that Personal Property is and will be included as a compulsory subject area in the law school course.” As recently as the 1990s the Law Society of Upper Canada approved interdisciplinary degree programs from Queen’s University with cooperative placements.
[6] Minutes of the Credentials Committee, Law Society of British Columbia, October 15, 1979.

10. In 1985, the Federation sponsored a conference on legal education that produced a number of learned papers and an apparent consensus that it was time the Federation established a national body to deal with questions of law school accreditation.[7] Although a national committee was established at that time, in 1994, the Federation assigned to the NCA the responsibility for assessing proposals for new law schools and making recommendations to law societies. The Federation did not, however, designate a standard against which applications for recognition of new law degrees could be measured.

11. In the past two years, a number of events have converged to focus law societies' attention on the lack of an articulated academic requirement for entry into their bar admission programs.

(a) New Law School Applications

12. After more than 25 years in which no new law schools were created in Canada and there was very little increase in law school seats throughout the country, several universities in Ontario have indicated an interest in creating law faculties. Lakehead University applied to the Law Society of Upper Canada and the NCA for recognition of its proposed curriculum. No fewer than three other universities have expressed interest in establishing law schools.

13. These universities naturally want to know what requirements law societies will place on them for recognition of their degrees so that their graduates can gain entry into bar admission programs in Canada. The only requirements available for the NCA's consideration are the 1957/1969 requirements, which are widely felt to be out-of-date and have, in any event, never been formally endorsed by law societies outside Ontario.

14. Furthermore, law societies adopted a National Mobility Agreement ("NMA") in 2002 that allows for inter-jurisdictional mobility based on recognition throughout Canada of membership in any provincial bar.[8] Thus recognition by any one

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[7] Federation of Law Societies of Canada, *Legal Education in Canada*, 1985.

[8] All provincial law societies have now signed the National Mobility Agreement. All except Quebec have implemented the Agreements. Regulations recently enacted in Quebec will soon provide for

province of the common law degree of a particular university amounts to *de facto* recognition by all. It seems timely not only to articulate a standard for the NCA to use when assessing recognition requests by new law schools, but to ensure that the standard is nationally endorsed and applicable to existing law schools as well.

15. In July of 2008, the Ontario Government announced that it would not fund new law schools in Ontario at this time. This announcement appears to remove the immediacy of this issue, but does not of course preclude the possibility of new law schools emerging in other provinces. Moreover, the importance of articulating a national standard remains. The portability of legal credentials should be based on clear and transparent principles. The absence of an accepted national standard in Canada stands in marked contrast to the approach taken in other common law jurisdictions.

(b) Increase in Internationally Trained Lawyers

16. In addition to the challenges arising from applications for new law schools, the number of graduates of international law schools who apply for admission to bar admission programs has steadily increased over the past twenty years. For example, the number of internationally educated applicants seeking Certificates of Qualification from the NCA has increased from 225 in 1999 to 532 in 2007 on a more or less straight-line basis.[9]

17. These students, increasing numbers of who are Canadians who have gone abroad for their legal studies do not by definition have a Canadian law degree.

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mobility provisions adapted to reflect the existence of a different system of law in that province. Territorial law societies have agreed to a separate, somewhat more limited, mobility agreement.

[9] National Committee of Accreditation applications 1999-2007:

1999: 225 applications
2000: 235 applications
2001: 261 applications
2002: 328 applications
2003: 367 applications
2004:340 applications
2005:464 applications
2006: 446 applications
2007:532 applications

The NCA's role is to evaluate the legal training and professional experience of persons with international or non-common law legal credentials from Québec who wish to be admitted to common law bars in Canada. The process includes an examination of the length of the law program, whether the candidate has undergraduate education prior to law school, the courses taken, the legal system in existence where the law degree was obtained (e.g. common law, civil law, hybrid), the graduate's standing, and the nature and duration of any legal experience.

18. The NCA determines what additional examinations or schooling an applicant must successfully complete to be issued a Certificate of Qualification that attests that the applicant has the "equivalent to a Canadian common law degree." Because the necessary elements of a Canadian common law degree are not clearly or nationally defined, the question has arisen – equivalent to what?

19. The development of a national standard for domestic common law degrees would facilitate the assessment of equivalency of international law degrees and improve the transparency of the process.

(c) Fair Access Legislation

20. Legislation in Ontario and Manitoba, and under discussion in Nova Scotia, requires self-governing professions to designate requirements for entry to the profession that are transparent, objective, impartial and fair to ensure that candidates do not face unfair or arbitrary barriers, and will monitor regulators' compliance. Some of the relevant provisions of the Ontario legislation (which is similar to Manitoba's) are set out at **Appendix 4**.

21. Fair access legislation requires a regulatory body using a third party to conduct assessments of international credentials to ensure that that body also conforms to the requirements of the legislation. For the legal profession, the legislative requirements are therefore applicable to NCA processes at least in jurisdictions with fairness legislation and arguably, as a matter of principle, for all common law jurisdictions.

Integrated Education

22. While these challenges have been unfolding, a number of legal educators have been proposing innovative approaches to the teaching of law, including greater integration of practical and theoretical instruction, particularly in third year.

23. Under such programs, academic instruction is more closely integrated with the development of practical skills so that upon call to the bar lawyers are better prepared to advise clients and protect their interests. The benefits of a more integrated program have been set out in a report produced by the Carnegie Foundation for the Advancement of Teaching in 2007 entitled, *Educating Lawyers: Preparation for the Profession of Law*. An excerpt is included at **Appendix 5**. In 2007 the American Clinical Legal Education Association completed its report entitled, *Best Practices in Legal Education*, chaired by Professor Roy Stuckey, and came to similar conclusions as the Carnegie report. An excerpt is included at **Appendix 6.**

24. In Canada, unlike the United States, before students can be called to the bar they must article for a period of time, usually from ten to 12 months, and take bar admission programs that include some skills training. The purpose of this period of articles and bar admission programs is to provide practical instruction in the practice of law.

25. While articling affords Canadian law students some direct practical experience before call to the bar, there continues to be variation in the quality of the process. The existence of articling does not eliminate the relevance of the Carnegie and Stuckey studies to the Canadian experience. Law schools have a significant role to play in combining the doctrinal and theoretical education with the tools necessary for practical application. Law schools increasingly appreciate the role of skills training in education and continue to develop innovative and integrated skills opportunities for students, including clinical training placements.

Creation of the Task Force

26. The Federation established this Task Force in June 2007 to review the criteria currently in place for the approved common law degree and, if appropriate, to recommend modifications to these criteria to achieve a national standard for recognition of an approved common law degree for entry into law society bar admission programs. The precise terms of reference are set out at **Appendix 7**.[10]

27. The Task Force comprises eight benchers and former benchers and three staff members from law societies across the country.[11] The Task Force has met eleven times. In November 2007 the Task Force Chair met with the Canadian Council of Law Deans ("the Council") and invited input from the Deans.

28. The Council established a working group of three Deans that met with the Task Force on two occasions and was invited to provide the Task Force with its views respecting the nature of the Canadian legal education experience and expectations of students enrolled in a Canadian LL.B./J.D. program. The Council endorsed the working group's overview report ("Deans' Report"), set out at **Appendix 8.** The Task Force has found both its discussions with the Deans and the report helpful to its deliberations.

29. In addition, in March an ad hoc group of law faculty held a symposium to discuss the Task Force's work. Task Force members were invited to attend a question and answer session. The Task Force found the session informative and useful. Subsequent to the session the ad hoc group provided the Task Force with a

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[10] This Task Force has been mandated to consider those competence-based requirements that should be required *for entry into bar admission programs*. It may well be, however, that following the completion of this process law societies will want to consider the implications for their own bar admission and licensing programs, with a view to considering the development of a national approach.

[11] John J. L. Hunter, Q.C. (Chair) (British Columbia), Susan Barber (Saskatchewan), Babak Barin (Québec), Vern Krishna, C.M., Q.C.(Ontario), Brenda Lutz (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), and Alan D. Treleaven (Law Society of British Columbia).

paper that reiterated and expanded upon the perspectives and suggestions outlined during the meeting. Its paper is set out at **Appendix 9**.

30. This consultation paper sets out specific issues the Task Force is considering and invites comment. The Task Force's intention is to receive and consider the comments before preparing its final report for Federation Council in the spring of 2009.

Law Societies' Goals Respecting Competence

31. Law societies in Canada regulate in the public interest. Among their other responsibilities they must develop standards of competence for members of the profession. As part of this process they must ensure that candidates for entry into law society bar admission programs meet required standards for the practice of law. Further, they must articulate and implement those required standards in ways that are transparent, objective, fair and impartial.

Developing the Required Standard

32. The Task Force's preliminary view is that the required standard should address competencies in fundamental areas of substantive knowledge, legal skills and professional responsibility. It should address the legal education environment in which those competencies have been acquired.

33. Candidates who seek entry into law society bar admission programs should have acquired a comprehensive legal education that provides the candidates with framework competencies, including a heightened awareness of professional ethics and conduct, and an understanding of those competencies in the context of the Canadian legal system, to prepare them for the practice of law.

(a) Required Competencies

34. At the heart of law are relationships in which individuals interact with one another, the state, and societal and business entities. 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.

35. Each context and each issue may require the lawyer to bring to bear a wide range of skills and substantive 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.

36. 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.

37. 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 bar 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.

38. The Task Force agrees with the characterization of law schools as “hybrid institutions” with antecedents both in the historic community of practitioners and in the modern research university.[12] Professor Harry Arthurs expressed this duality more than twenty years ago in language that the Task Force believes is still apposite:

> Law faculties are part of the university, but they are not governed solely by the university’s statutes and structures. They are subject as well to the regulations of professional governing bodies that partly define their curriculums, teaching terms, and other matters such as minimum admission criteria.[13]

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[12] William M. Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (The Carnegie Foundation for the Advancement of Teaching), 2007, at p. 4; also referenced in the Deans’ Report, p. 3.

[13] Harry W. Arthurs, “The Law School in a University Setting”, at *Legal Education in Canada,* p. 159.

39. In the Task Force's view law school should be that vital component of the lawyer's education that provides the framework knowledge, skills, attitudes and capacity for reflection that enable its graduates to move into the lawyering roles described above.

40. The Carnegie Foundation's study highlights the common goal of professional training across professions:

> Across the otherwise disparate-seeming educational experiences of seminary, medical school, nursing school, engineering school and law school, we identified a common goal: professional education aims to initiate the novice practitioner to think, to perform, and to conduct themselves (that is to act morally and ethically) like professionals. We observed that toward this goal of knowledge, skills, and attitudes, education to prepare professionals involves six tasks:
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> 1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research
> 2. Providing students with the capacity to engage in complex practice
> 3. Enabling students to learn to make judgments under conditions of uncertainty
> 4. Teaching students how to learn from the experience
> 5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community
> 6. Forming students able and willing to join an enterprise of public service[14]

41. The Task Force agrees with this description, which recognizes the law school as a beginning point in the learning process, albeit a critically important one. It also speaks to a legal education that embraces both the technical requirements of the profession and the intellectual tradition of a liberal education that creates true professionals.

42. The Task Force has considered what framework competencies should form the essential foundation that graduates seeking entry into law society bar admission programs should have acquired in law school. In developing a proposed framework the Task Force has reviewed competency descriptions employed by regulators in other common law jurisdictions. In addition it has considered the

[14] Carnegie, p.22.

extensive work on lawyering skills and competencies that the Law Society of Upper Canada undertook in the development of its licensing process and the analysis and the survey work that the law societies of Alberta, Saskatchewan and Manitoba undertook in the development of their CPLED bar admission program.

43. Students should acquire these framework competencies with an understanding of their operation in the Canadian legal system. This jurisdiction specific understanding is of fundamental importance to anyone being called to the bar by a law society in a Canadian common law jurisdiction.

44. The rationale behind the Task Force's approach to the framework competencies is set out below:

a. The foundations of the common law, including knowledge and understanding of the doctrines, principles and sources of the common law, how it is made and has been developed in Canada and the institutions within which law is administered in Canada form the underpinning to most areas of Canadian legal practice. These foundations include contracts, torts, property law, criminal law, and civil procedure.

b. The constitutional law of Canada, both in its elaboration of the division of legislative powers and in its protection of human rights through the *Charter of Rights and Freedoms* affects the operation of the law in myriad areas. Competency in constitutional and human rights principles and Charter values is fundamental.

c. Equitable principles including fiduciary obligations, trusts and equitable remedies, as well as business organization concepts affect a multitude of legal relationships in the Canadian legal system. Competency in these principles and concepts is fundamental.

d. Legislation and regulation play an increasingly central role in the Canadian legal system. Competency in statutory analysis and in regulatory and administrative law is fundamental.

e. Legal issues and problems (regardless of substantive area) are complex, multi-layered and challenging and require specific skills directed at solving them. Competency in dispute resolution and advocacy and in their evidentiary underpinnings is fundamental.

f. The law is an intellectual discipline, requiring of members of the profession the capacity to research and analyze the law, to apply findings to solve legal problems, to reason, communicate, adapt and evolve.

Competency in legal research skills and written and oral communication skills specific to law is fundamental.

g. The Canadian legal profession operates within an established ethical framework that circumscribes and defines its members' behavior. Competency in principles of professional responsibility is fundamental.

45. Recognizing that generally speaking there are a number of ways that the competencies described above might be acquired in the law school setting, the Task Force considers that specific curriculum development should be left to law faculties to determine, providing students some flexibility in meeting the required standards. It is not necessary in most instances for law societies to articulate how many credit hours should be spent in any one of the competencies,[15] nor to restrict their attainment through specified courses. Competency in statutory analysis, for example, could be obtained by taking any number of courses in which a statute or statutes play a fundamental role (e.g. administrative law, family law, criminal law, income tax law, business corporations, real estate). The system ultimately put in place to monitor the required standards would address compliance issues.

(b) Professional Responsibility

46. The Task Force considers that professional responsibility should be approached somewhat differently from the other competencies. Both the profession and the legal academy have a responsibility to develop and nurture a sense of professionalism in students and lawyers. The opportunity for early intellectual discourse on this fundamentally important subject area seems ideally suited to a university environment.

47. More than 15 years ago, the Federation funded an important study by W. Brent Cotter, now Dean of the University of Saskatchewan's College of Law, on the importance of professional responsibility instruction as a component of legal

[15] Harvard Law School has recently made substantial changes to its first year curriculum, adding a number of courses. It has been able to do so because it has reduced the number of credit hours of some of the foundational courses such as contracts and torts.

education.[16] Today, although a number of law schools require students to take a mandatory professional responsibility course, many do not, preferring what is referred to as the "pervasive" approach in which professional responsibility considerations are referred to where applicable across the curriculum.

48. While generally speaking the Task Force thinks it more appropriate to articulate competencies rather than specific courses, it believes that the need to ensure that students have a solid understanding of professional responsibility argues in favour of a stand-alone course in professional responsibility being required of graduates seeking to enter bar admission programs. Such a course should address both the broad principles of professionalism and the ethical issues with which lawyers must contend throughout their careers, including in areas such as conflicts, solicitor client privilege, and the lawyer's relationship with the administration of justice.

49. Some law schools have taken the view that professional responsibility should be embedded in the substantive law courses offered to the students. The Task Force sees a stand-alone course as complementing rather than replacing such course content.

50. The addition of such a mandatory course should not, however, relieve regulators of the obligation to provide instruction in professional responsibility in bar admission programs and in post-call education, with particular reference to law societies' Rules of Professional Conduct.

51. In summary then, the Task Force is of the preliminary view that the following competencies should constitute the required curriculum standard for a graduate's entry into law society bar admission programs in common law jurisdictions in Canada. As stated above, the teaching and assessment related to these competencies should provide students with an understanding of the operation of the law in the Canadian legal system:

    a. Foundations of common law, including,

[16] W. Brent Cotter, Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education, 1992.

- 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;
- Criminal law; and
- Civil Procedure.

b. The constitutional law of Canada, including principles of human rights and *Charter* values.

c. Equitable principles, including fiduciary obligations, trusts and equitable remedies.

d. Business organization concepts.

e. Principles of statutory analysis and regulatory and administrative law.

f. Dispute resolution and advocacy skills and knowledge of their evidentiary underpinnings.

g. Legal research skills.

h. Oral and written communication skills specific to law.

i. Professional responsibility.

52. The articulation of competencies in this manner would also provide greater certainty for those seeking to obtain a Certificate of Qualification from the NCA. This is because the competencies to be required of Canadian common law graduates would also form the basis for the equivalency measurement required of internationally educated candidates.

53. The concern has been expressed to the Task Force that a curriculum-based standard puts too much weight on prescribed courses and may constrain innovative developments in legal education if these stand alone in articulating academic requirements for the practice of law. The Task Force is sensitive to this concern, but has a corresponding concern that innovation should not interfere with graduates receiving education in the essential concepts of the law necessary for practice.

Questions for comment:

1. Does the suggested list of foundational competencies encompass those that candidates for entry to bar admission programs should possess?

2. Is it over- or under-inclusive?

3. Is a stand-alone course on professional responsibility an appropriate requirement for candidates seeking entry to bar admission programs?

(c) Comprehensive Legal Education - Institutional Requirements

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

55. One of the concerns expressed to the Task Force about the competencies approach was that a "list" does not begin to capture the richness of a law school education - the community in which one begins to think like a lawyer, but also to look at law critically and address deficiencies in legal systems and principles. As the Deans' Report has pointed out, 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 practice skills.

56. If law societies agree with this view of legal education then there is every reason to articulate certain other institutional requirements that should form part of the required standard for entry into law society bar admission programs, as well as developing criteria against which to measure new law school applications.

57. The Task Force has isolated four particular issues on which it seeks comment:

    (i) Law school admission requirements;
    (ii) Length of the law school program;
    (iii) Program delivery; and
    (iv) Joint degrees.

58. In general the institutional issues discussed below require some reflection because of the changes that have occurred in law school education over recent decades. They speak to important issues about the quality of the law school education, and the need for structures that accommodate regulatory requirements, but are flexible and capable of innovation.

(i) Law School Admission Requirements

59. The 1957/1969 Law Society of Upper Canada requirements state that the minimum requirement for admission to a law school course should be "successful completion of two years in an approved course in an approved university after 'senior matriculation'" or three years after junior matriculation.[17] "Senior matriculation" referred to Grade 13, which no longer exists in Ontario or anywhere else in Canada, while junior matriculation means Grade 12.

60. While the Task Force believes that it is appropriate to clarify the minimum requirement for admission to law schools, it cannot determine what is the current typical law school approach or identify what the best approach would be.

61. In the United States the prerequisite for admission to law school is an undergraduate university degree. As an increasing number of Canadian law schools award J.D. degrees in place of the LL.B. degree questions arise as to whether the prerequisite for law school should mirror that in the United States where the J.D. is awarded.

62. In the United Kingdom the law degree is often taken immediately following secondary school. In an increasing number of Canadian common law schools the *de facto* admission requirement is an undergraduate degree, in part because of the competition for spaces in law faculties. At McGill University, however, students can be, and often are, admitted following completion of the two year CEGEP program (junior college) and this is a long-standing approach.

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[17] Although never adopted nationally, the 1957/69 requirements respecting admission requirements and length of law degree program were generally implemented across the country.

63. The Task Force is inclined to the view that at least some post-secondary education should continue to be required as a general pre-requisite to law school and that generally speaking it should be university education. Its views are based on a belief that undergraduate university education provides an important foundation for the advanced learning that takes place in law school. At the same time it recognizes McGill's tradition to admit students from CEGEP and considers that it may be appropriate to consider an exception to its general view that the post-secondary education should take place in a university setting to accommodate this tradition. It also believes that special admission programs such as those for mature students and Aboriginal students should continue to exist.

64. The issue, then, is whether the prerequisite for the Canadian common law faculty should continue to be two years post secondary education in a university setting or be changed to another standard. A clear standard will also make the process more transparent and objective for evaluating international degrees for equivalency.

Questions for comment:

1. **Should the existing prerequisite for entry into Canadian common law faculties of two years of post-secondary education in a university setting be maintained or should it be changed to reflect the *de facto* requirement of an undergraduate university degree?**

2. **If so, should McGill's tradition of admitting students following completion of a two-year CEGEP program be accommodated as an exception to the general prerequisite?**

3. **Are there other exceptions that should be recognized and accommodated?**

(ii) Length of the Law School Program

65. Under the 1957/69 Law Society of Upper Canada requirements, the accepted law degree program was to be "three years in full-time attendance."

66. The Task Force does not see the justification for limiting the length of law school to the language used in the 1957/69 requirements. There may be many innovative and valuable programs that permit students to complete a degree in

fewer than three academic years or without a “full-time attendance” requirement *at the home university*. So, for example, students may complete a degree on the semester system that allows them to attend law school in six terms over two years, instead of over three years. Similarly, a student may attend a term at a law school in another jurisdiction such that full-time attendance at the home university during that term is not possible.

67. The Task Force is of the view that it may be more appropriate to articulate the requirement in terms of credit hours, the current Canadian common-law degree norm being 90 credit hours. In the Task Force's view 90 credit hours as a general law degree requirement allows for both the satisfaction of the competencies described in this report and the opportunity to pursue additional study in subject areas of particular interest to individual students.

Questions for comment:

1. Should the standard length for the common law degree be expressed in terms of credit hours rather than years of study?

2. If so is 90 credit hours the appropriate standard?

(iii) Program Delivery

68. Electronic delivery did not exist when the 1957/69 Law Society of Upper Canada requirements were put in place and there is still debate on the role it should play in law school education, which continues to be primarily based on an in-person delivery model. The model is based on the belief that law students benefit from interacting in person with their professors, other students and adjunct faculty made up of practitioners. It assumes that the acquisition of specialized knowledge and professional identity is enhanced by face-to-face interaction. Moreover it is suggested that the increased attention to skills training makes personal attendance essential.

69. The Task Force is inclined to the view that while innovative delivery systems should not be discouraged, in-person learning should continue to be the primary method of educational delivery for the foreseeable future. It is interested,

however, in receiving comments on this issue, particularly from those who have experience with non-traditional delivery methods.

Questions for comment:

1. **Should in-person learning be required for all or part of the law school program?**

2. **Are there other delivery systems that should be taken into account?**

(iv) Joint Degrees

70. Combined or joint degrees are not dealt with in the Law Society of Upper Canada 1957/1969 requirements, but have become more prevalent in the fifty years since the original standard was devised. These degrees reflect the increasing sophistication and inter-jurisdictional components of legal education.

71. In some interdisciplinary joint degree programs the number of credit hours devoted specifically to law courses is fewer than ninety. The Task Force's initial response to this is that if these programs are thoughtfully developed to interweave the learning between two disciplines, the reduced number of specific law credits should not undermine the legitimacy of the joint degree.

72. The Task Force would be interested in receiving more information on the development of joint degrees. It may be that the most appropriate way to address the approval of joint degrees for the purposes of entry to bar admission programs is through a national monitoring body that can consider, among other things, new law programs within the established law faculties.

Questions for comment:

1. **How should joint degree programs be treated for the recognition of the common law degree?**

2. **Should a national body monitor joint degree programs?**

(d) New Law Schools

73. The issue of comprehensive legal education that the Task Force has identified above is also relevant to a discussion of proposals for law society recognition of

the law degrees of graduates from new law schools for the purposes of entry to bar admission programs.

74. The Task Force agrees with the comments in the Deans' Report that there are certain characteristics and underpinnings that are essential to the development and maintenance of an effective law school environment. These go beyond the institutional issues discussed above. The Deans' Report focuses on faculty, curriculum, fostering intellectual and research communities, library and other facilities, and student support services. Without commenting on whether there are additional components that should be in place, the Task Force is of the view that in determining whether to recognize a new law school's law degree law societies should, at a minimum, consider the presence of these components.

75. The Task Force believes that the most effective way to address the issue of recognition of law degrees from new law schools is to establish a national body that will develop and monitor the appropriate components, including the institutional requirements, characteristics, and underpinnings and application of whatever required standard that may emerge from the Task Force's work. This national approach is in keeping with the recognition that portability of common law degrees is an important principle to uphold.

Questions for comments:

1. Should a national body be established to develop the components for recognition of law degrees from new law school programs?

2. Are there alternatives to this approach?

Ensuring Compliance with a Required Standard

76. Once a required standard for admission into law society bar admission programs is articulated, law societies must consider how to monitor compliance with the standard. This is an issue that regulators in many jurisdictions have addressed in a variety of ways depending upon their own legal regulatory structures and traditions.

77. The Task Force has reviewed a number of models from jurisdictions such as England and Wales, Australia, and the United States. In addition the Task Force reviewed a paper from the Federation's 1986 conference on legal education in which the issue of accreditation of law degree programs was discussed. All of this information has been useful to the Task Force as background and is summarized at **Appendix 10**.

78. The Task Force has examined three possible compliance options:
   a. The "status quo" option.
   b. The examination option.
   c. The approved law degree option.

(a) The "Status Quo" Option

79. Under the "status quo" law societies have, in effect, not monitored law school curricula. They have accepted that students with a degree from one of the 16 Canadian common law faculties are automatically eligible for admission into law society bar admission programs.

80. In the course of its discussions with the legal academy the Task Force has been told that the status quo has permitted the development of sophisticated Canadian law schools that promote innovation and are capable of adapting to the changing needs of the legal profession.

81. The Task Force has been told that as faculties within established university structures, law schools in Canada are required to report regularly on their mission, values, and performance, are accountable for scholarly results and pedagogical outcomes, are subject to rigorous internal and external peer review, and engage in ongoing curricular reviews and a host of other activities designed to ensure that they are of the highest calibre both as professional schools and scholarly institutions.

82. The suggestion has been made, as well, that the profession already exercises enormous influence over curriculum because of the content of bar admission examinations and the influence of alumni over their universities. In addition,

because all law schools in Canada are publicly funded the provincial governments exercise their own control relating to budgetary decisions.

83. In summary the advantages of the status quo have been described as,

a. fostering innovation while at the same time, because of internal checks and balances, ensuring quality legal education;

b. avoiding the danger of choosing a "one size fits all" approach; and

c. avoiding the creation of another layer of regulation that some would say is not necessary.

84. The Task Force sees certain regulatory concerns with the status quo. They may be summarized as follows:

a. Regardless of how rigorous university internal evaluation structures are, universities have a different mandate from law societies and define their mission differently;

b. It does not give weight to the responsibility of law societies to determine the academic requirements that are necessary to practice law and to ensure that those entering bar admission programs are competent to do so; and

c. It does not address increasing external demands on law societies engendered by fair access legislation, increasing interest in new law schools, and a general scrutiny of self-regulation, to demonstrate consistency and transparency in their processes.

(b) The Examination Option

85. Another option to monitor compliance with required standards would be to create a national examination that graduates seeking to enter bar admission programs would first be required to pass. It would be designed to test their competence in the areas that regulators designate as part of the required standard. Law societies would determine the competencies that they believe to be essential and examine on them, with a passing grade being the measurement that the student has acquired those competencies.

86. 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.

87. 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.

88. It is important as well to consider the prerequisite necessary to be entitled to write the examination. If one assumes that a law degree should be required does it matter whether the law degree is a Canadian common law degree? Could it be a common law degree from any jurisdiction or indeed a law degree from any legal system? If the examination process is equally applicable to internationally trained candidates it suggests that successful completion of the examination addresses all the differences between Canadian and international law degrees. The content of the international degree would be irrelevant. Only successful completion of the examination would matter.

89. Another possible disadvantage of this approach is that it adds another layer to law students' education. Further, if a Canadian common law degree or its equivalent would be required, then under this option internationally trained candidates would still be required to undergo an equivalency assessment and meet whatever requirements accompany that before being eligible to write the national exam, potentially adding an additional layer to their qualifying process.

90. If the examination option were chosen, a national body would need to be established to set the examinations and monitor that their content continues to be relevant.

(c) Approved Law Degree Option

91. Under this option a required standard would be established, potentially along the lines described earlier in this paper and law faculties would demonstrate what they are doing to ensure that their graduates have achieved the required competencies. If the degree is approved, any student with a law degree from that law faculty would be eligible to enter bar admission programs. What would differentiate this option from the current approach of approving all graduates from the 16 common-law law faculties would be the establishment of a current, articulated standard and a monitoring process to address ongoing program development.

92. The development of a national body for the approval and monitoring of the common law degree seems long overdue. Even in 1985, both educators and regulators were worried about the prospect of different law societies coming to different conclusions on the acceptability of law schools' degrees. Kenneth Jarvis wrote, in 1984:

> 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…. The anomaly of one province discharging the necessary responsibility of co-ordination should be ended. The time appears to be ripe for the Federation of Law Societies to accept that responsibility…[18]

93. Such a national body, referred to elsewhere in this paper, could address issues related to compliance and ongoing modification of required competencies over time, consideration of criteria for approval of new law school degrees and new programs within faculties, for the purposes of graduates' entry to bar admission programs.

94. To be most effective, any such a national body should include significant participation of law faculty and administrators so that the expertise of legal educators can be brought to bear on the issues.

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[18] Legal Education in Canada, op. cit. "Accreditation of Law Degree Programs", Letter from Kenneth Jarvis, February 20, 1984, p.791also at Appendix 2.

95. The Task Force does not envision a complex accreditation and monitoring structure such as the American Bar Association uses, but does envision regular monitoring, perhaps every five years, to ensure that the required standard continues to be implemented across the country.

96. Some possible advantages of this approach are,

    a. it offers certainty to both the law schools and their graduates that their degrees will be recognized for the purposes of entrance into bar admission programs;

    b. through regular monitoring it satisfies law societies' responsibility for admission standards, but continues to allow for significant flexibility in how law schools meet the standards;

    c. it is capable of building into the monitoring process the institutional requirements discussed elsewhere in this report;

    d. unlike the examination option it does not add an additional layer to legal education.

97. Some possible disadvantages of this approach are,

    a. from the perspective of law faculties, it increases external reviews of their structures and approaches;

    b. there are those who will say that it will inhibit innovation and promote a "one size fits all" approach to legal education;

    c. it may not be as specific in terms of knowledge and skills as some may suggest should be the case; and

    d. it requires the creation of a new national structure that will have cost implications.

98. If this option were adopted, internationally educated candidates for entry into bar admission programs would continue to be required to obtain a Certificate of Qualification from the NCA. The NCA would play the role of the monitoring body for internationally educated candidates. The criteria the NCA applies would be more directly linked to the competencies and standards required for domestic law graduates.

Questions for comment:

1. **The Task Force has identified three possible compliance models. Please provide comments on these models.**

2. **Are there other models that should be considered and if so, what are they?**

The Consultation Stage

99. With the approval of the Federation Council for consultation, the Task Force is disseminating this paper nationally. It is anticipated that upon receipt individual law societies will distribute the paper within their jurisdictions to those groups with whom they regularly consult.

100. The Task Force invites written comments until December 15, 2008. Thereafter, it will prepare a final report and recommendations for Federation Council in the spring of 2009.

101. Comments are invited on some or all of the questions set out in this paper and repeated below, or on any aspect of the issues under consideration.

1. Does the suggested list of foundational competencies encompass those that candidates for entry to bar admission programs should possess?

2. Is it over or under-inclusive?

3. Is a stand-alone course on professional responsibility an appropriate requirement for candidates seeking entry to bar admission programs?

4. Should the existing prerequisite for entry into Canadian common law faculties of two years of post-secondary education in a university setting be maintained or should it be changed to reflect the *de facto* requirement of an undergraduate university degree?

5. If so, should McGill's tradition of admitting students following completion of a two-year CEGEP program be accommodated as an exception to the general prerequisite?

6. Are there other exceptions that should be recognized and accommodated?

7. Should the standard length for the common law degree be expressed in terms of credit hours rather than years of study?

8. If so, is 90 credit hours the appropriate standard?

9. Should in person learning be required for all or part of the law school program?

10. Are there other delivery systems that should be taken into account?

11. How should joint degree programs be treated for the recognition of the common law degree?

12. Should a national body monitor joint degree programs?

13. Should a national body be established to develop the components for recognition of law degrees from new law school programs?

14. Are there alternatives to this approach?

15. The Task Force has identified three possible compliance models. Please provide comments on these models.

16. Are there other models that should be considered and if so, what are they?

Please send your comments by December 15, 2008 to,

Federation of Law Societies of Canada
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Appendix 1

NATIONAL COMMITTEE ON ACCREDITATION OVERVIEW

A. Mandate

The National Committee on Accreditation ("NCA") is a standing Committee of the Federation of Law Societies of Canada and is made up of representatives from the Council of Canadian Law Deans, members of the practising bar, and members involved with the administration of provincial law societies.

The NCA evaluates the legal training and professional experience of persons with foreign or non-common law legal credentials (including Québec) who wish to be admitted to a common law bar in Canada. Upon completion of its review, the NCA issues a recommendation describing the scope and extent of any further legal education that in its opinion the applicant needs to complete to equal the standard of those who have earned a Canadian LL.B. degree.

The Certificate of Qualification does not duplicate the LL.B. degree. Applicants who wish to obtain an LL.B. degree should apply to a law school. The NCA evaluates all applicants, whether Canadians with foreign legal education, foreign nationals with foreign legal education and Quebec civil law degrees, on their academic and professional profile.

The National Committee on Accreditation does not evaluate credentials for lawyers who want to apply to and become members of the Barreau du Québec or the Chambre des notaires du Québec, which have their own evaluation procedures.

The NCA applies a uniform standard on a national basis so that applicants with foreign law qualifications can apply to the Committee regardless of the common law province in which they wish to practise in Canada. Thus, applicants do not need to satisfy disparate entrance standards to practise law in Canada.

B. Method of Evaluation

1. Method

The nature of the Committee's mandate is captured in the words used in the Certificate of Qualification. The Certificate states as follows:

> *"Having passed the prescribed course of studies required by the National Committee, it is hereby certified that the National Committee on Accreditation considers (name of applicant) to have education and training equivalent to a graduate of an approved Canadian law school."*

Thus, the Committee certifies that an applicant has:

- an understanding and knowledge of Canadian law, and
- knowledge equivalent to that of a graduate of a Canadian common law LL.B. program.

"Equivalence to an approved Canadian LL.B. degree" serves as the Committee's benchmark when it evaluates applicants with foreign legal education or training. The Certificate of Qualification does not, however, duplicate the LL.B. degree, which varies between law schools. NCA applicants may be asked to challenge examinations in subjects that all law schools may not require for the LL.B. degree.

The NCA bases its recommendation on the applicant's legal background, both academic and professional. It takes into account the source country of legal education (common law, non-common law, "hybrid"), subject matter studied, academic marks and standing, nature of the degree granting institution, professional qualifications and length and nature of professional legal experience.

The NCA reviews each applicant's file individually. Upon completion of its review, the NCA issues a recommendation that the applicant:

1. pass examinations in specified areas of Canadian law;
2. take further education at a Canadian law school with a specified program of studies; or
3. complete a Canadian LL.B. program.

2. Prescribed Subjects/Courses

The NCA expects applicants to proceed to a bar admission program. Substantive law is not generally taught in Canadian bar admission programs. Rather, the emphasis in most Bar courses is on practical skills and procedure.

Thus, applicants are expected to have sufficient knowledge of Canadian substantive law and procedure before they enter the program.
NCA applicants are expected to demonstrate competence in at least the following basic practice areas:

- Administrative Law
- Business Law (Corporate and Commercial)
- Civil Litigation
- Constitutional Law
- Contracts
- Criminal Law
- Criminal Procedure
- Estate Planning and Administration
- Evidence
- Family Law
- Professional Responsibility
- Property
- Real Estate
- Taxation
- Torts
- Trusts, Equity, Remedies.

3. Nature of Recommendations

The NCA may require applicants to complete successfully a stipulated number of "credit hours" of law studies at a Canadian common law school or write examinations in specific subjects. The number of hours stipulated depends upon the applicant's individual background of legal education and professional experience.

C. Evaluation Guidelines

The Committee is authorized to issue a Certificate of Qualification to any candidate who has attained education and training equivalent to graduates from a Canadian LL.B. program.

The Committee directs applicants with foreign legal credentials into the appropriate level of legal education in Canada so that they may proceed to admission into a Canadian common law bar on the same basis as domestic law graduates.

Each application is evaluated on an individual basis taking into account the particular circumstances of that individual's educational and professional background.

Factors to be taken into account include: age of degree, academic standing in all years of the LL.B. program, the content of courses, subject matter studied, relevant graduate legal education, law teaching experience and the quality of undergraduate education or training. First, Second, Third and Pass Class standings are grade classifications/rankings. However, some institutions use alphabetic or numeric grading systems.

D. Québec

The NCA evaluates applicants who have Quebec law degrees (LL.B or LL.L) including graduates of the Diplôme d'études supérieures spécialisées en Common Law nord-américaine (DESS) program of the University of Montreal or the Diplôme de deuxième cycle de common law et droit transnational (DDCCLDT) program of the University of Sherbrooke. Applicants are evaluated according to their particular educational background and relevant professional experience.

Applicants who graduate from a law school in the Province of Québec are evaluated by the Committee according to their particular educational background and relevant professional experience.
Québec graduates receive full credit for successfully completed courses in federal law.

Applicants who have not been admitted to the Bar of Québec are asked to complete the entire spectrum of common law courses through attendance for one year (approximately 32 credit hours) at a common law faculty in Canada.

Applicants who graduate with a "pure" civilian degree and are admitted to the Barreau du Québec are usually asked to write examinations in some or all of the following subjects:

- Contracts
- Civil Procedure

- Trusts/Equity
- Torts
- Real Property
- Commercial Law
- Family Law.

Applicants who have substantial (10 years) professional experience in common law areas of practice are considered on a case-by-case basis and evaluated upon the basis of their education, areas of practice and legal experience.

Graduates from civil law programs that also have some common law component typically receive credit for the common law portion of their studies. For example, a graduate with a civil law degree who has successfully completed common law Contracts, Torts or Real Property would receive credit for those subjects and be asked to complete a reduced common law program.

E. Status of Certificate of Qualification

The Certificate of Qualification entitles one to enter the Bar Admission Course in Ontario and is officially recognized by the Law Societies of Saskatchewan, British Columbia, Prince Edward Island. and Alberta as equivalent to graduation from an approved Canadian law school. Other law societies and law schools use the NCA's recommendation on a more informal basis.

Appendix 2

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.
C1A 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 arrangments 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.

Appendix 3

THE LAW SOCIETY OF UPPER CANADA

OFFICE OF THE SECRETARY

OSGOODE HALL
TORONTO 1

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

15th April, 1969.

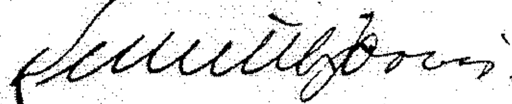
Professor Thomas G. Feeney,
Dean,
Faculty of Law,
University of Ottawa,
Ottawa 2, Ontario.

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.

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.

Appendix 4

Highlights of the *Fair Access to Regulated Professions Act, 2006*

- purpose of Act stated as helping to ensure that regulated professions and individuals applying for registration are governed by **registration practices** that are transparent, objective, impartial and fair

- positive duty on regulated professions to provide registration practices that are transparent, objective, impartial and fair; includes responsibility to ensure that practices of third party assessors of qualifications (NCA) meet the test

- requires regulated professions provide detailed information to applicants relevant to their registration practices

- all decisions and responses to applicants relevant to registration must be made within reasonable time; there must be an internal review or appeal from a registration decision within a reasonable time and the applicant is entitled to make submissions

- regulated professions must ensure training for assessors, adjudicators and others making registration decisions

- applicants are entitled to access to records relevant to their application, but access may be refused in certain circumstances, including that the record is subject to legal privilege

- the Fair Registration Practices Commissioner (FRPC) has broad powers under the Act to assess registration practices, specify audits, require reports and information from regulated professions, advise ministries and organizations on the Act, create different classes of regulated professions; the FRPC reports annually to the Minister of Citizenship and Immigration and the report will be tabled in the Ontario Legislature

- establishes an Access Centre for Internationally Trained Individuals to assist ITIs with information and assist professions and others with advice on implementation of the Act

- imposes reporting obligations on professions, including a review of their registration practices, a requirement to be audited, preparation of an annual fair registration practices report, provision of any information related to compliance with the Act.

- FRPC has authority to order that a profession has failed to comply with the Act. The FRPC cannot order a profession to make, amend or revoke any regulation it has authority to make under its governing Act, but can recommend that the profession make, amend or revoke or can recommend to the profession's Minister that he or she recommend or require the profession to so act; an appeal from an FRPC order is to the Divisional Court with leave and only on a question of law.

- The Act sets out offences under the Act and penalties. In any conflict between the Act and any other legislation, the Act prevails to the extent of the conflict.

- The regulations may create different classes of regulated professions and impose different requirements in respect of a class.

Appendix 5

Excerpt Carnegie Foundation for the Advancement of Teaching *Educating Lawyers: Preparation for the Profession of Law* (2007)

The Foundation's two-year study of legal education involved a reassessment of teaching and learning in American and Canadian law schools today. Intensive fieldwork was conducted at a cross section of 16 law schools during the 1999-2000 academic year. The study re-examines "thinking like a lawyer" – the paramount educational construct currently in use. The report shows how law school teaching affords students powerful intellectual tools while also shaping education and professional practice in subsequent years in significant, yet often unrecognized ways.

What sets [law school] courses apart from the arts and sciences experience is precisely their context–law school as apprenticeship to the profession of law. But there is room for improvement. The dramatic results of the first year of laws school's emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. If legal education were serious about such a goal, it would require a bolder, more integrated approach that would build on its strengths and address its most serious limitations. In pursuing such a goal, law schools could also benefit from the approaches used in education of physicians, teachers, nurses, engineers and clergy, as well as from research on learning.

Two Major Limitations of Legal Education

1. Most law schools give casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice.

2. Law schools fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills. Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals.

Assessment of Student Learning Remains Underdeveloped

Assessment of what students have learned–what they know and are able to do–is important in all forms of professional education.

Summative assessments are useful devices to protect the public, for they can ensure basic levels of competence. But there is another form of assessment, formative assessment, which focuses on supporting students in learning rather than ranking, sorting and filtering them.

Legal Education Approaches Improvement Incrementally, Not Comprehensively

To a significant degree, both supporters and opponents of increased attention to "lawyering" and professionalism have treated the major components of legal education in an *additive* way, not an integrative way.

Moreover, efforts to add new requirements are almost universally resisted, not only in legal education, but in professional education generally, because there is always too much to accomplish in too little time.

Toward a More Integrated Model: A Historic Opportunity to Advance Legal Education

Law school provides the beginning, not the full development, of students' professional competence and identity. At present, what most students get as a beginning is insufficient.

In particular, legal education should use more effectively the second two years of law school and more fully complement the teaching and learning of legal doctrine with the teaching and learning of practice. Legal education should also give more focused attention to the actual and potential effects of the law school experience on the formation of future legal professionals.

Recommendations

<u>Offer an Integrated Curriculum</u>

To build on their strengths and address their shortcomings, law schools should offer an integrated, three-part curriculum: (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) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work.

<u>Join "Lawyering," Professionalism and Legal Analysis from the Start</u>

The existing common core of legal education needs to be expanded to provide students substantial experience with practice as well as opportunities to wrestle with the issues of professionalism. Further, and building on the work already underway in several law schools, the teaching of legal analysis, while remaining central, should not stand alone as it does in so many schools. The teaching of legal doctrine needs to be fully integrated into the curriculum. It should extend beyond case-dialogue courses to become part of learning to "think like a lawyer" in practice settings.

<u>Make Better Use of the Second and Third Years of Law School</u>

[Law school] graduates mostly see their experiences with law-related summer employment after the first and second years of law school as having the greatest influence on their selection of career paths. Law schools could give new emphasis to

the third year by designing it as a kind of “capstone” opportunity for students to develop specialized knowledge, engage in advanced clinical training, and work with faculty and peers in serious, comprehensive reflection on their educational experience and their strategies for career and future professional growth.

Recognize a Common Purpose

Amid the useful varieties of mission and emphasis among American law schools, the formation of competent and committed professionals deserves and needs to be the common, unifying purpose. A focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America.

Examples from the Field

Some law schools are already addressing the need for a more dynamic, integrated curriculum.

The law schools of New York University (NYU) and the City University of New York (CUNY) each exemplify, in different ways, ongoing efforts to bring the three aspects of legal apprenticeship into active relation. CUNY cultivates close interrelations between doctrinal and lawyering courses, including a resource-intensive investment in small sections in both doctrinal and lawyering seminars in the first year and a heavy use of simulation throughout the curriculum. The school also provides extensive clinical experience linked to the lawyering sequence. At NYU, doctrinal, lawyering and clinical courses are linked in a variety of intentional ways. There, the lawyering curriculum also serves as a connecting point for faculty discussion and theoretical work, as well as a way to encourage students to consider their educational experience as a unified effort.

Yale Law School has restructured its first-year curriculum by reducing the number of required doctrinal courses and encouraging students to elect an introductory clinical course in their second semester. This is not full-scale integration of the sort necessary to legal education, but it and other efforts like it point toward an intermediate strategy: a course of study that encourages students to shift their focus between doctrine and practical experience not once but several times, so as to gradually develop more competence in each area while making more linkages between them.

Southwestern Law School has instituted a new first-year curriculum, in which students take four doctrinal courses in their first semester rather than five, allowing for an intensified two-semester, integrated lawyering course plus an elective course in their second semester. The lawyering course expands a legal writing and research experience to include detailed work in legal methods and reasoning, as well as interviewing and advocacy.

The Rewards of Innovation

As desirable–and necessary–as developing a more balanced and integrated legal education might be, change does not come without effort and cost. Forward-thinking faculty and schools will have to overcome significant obstacles. A trade-off between higher costs and greater educational effectiveness is one. Resistance to change in a largely successful and comfortable academic enterprise is another.

It is well worth the effort. The calling of legal educators is a high one–to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens' loyalty.

CLINICAL LEGAL EDUCATION ASSOCIATION

Best Practices for Legal Education (2007)

CLEA initiated a project to develop a statement of best practices in 2001 by appointing a steering committee chaired by Roy Stuckey. Each new draft was posted on the internet and suggestions for improving the document were widely solicited. Many people made suggestions, and some even drafted segments that were incorporated into the document. As the document evolved, presentations about it were made at a variety of meetings and conferences, and the document was the subject of a national conference at Pace University School of Law in March 2005, as well as several CLEA-sponsored workshops.

Roy Stuckey and Others, *Best Practices for Legal* Education (2007): While supplies last, hard copies can be obtained free of charge from Roy Stuckey.

CLEA has appointed an Implementation Committee to develop strategies for persuading law schools to implement best practices for legal education. The Committee is co-chaired by Carrie Kaas and Alex Scherr. If you have any ideas that might help the Committee succeed, they would be glad to hear from you.

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Introduction

This book provides a vision of what legal education might become if legal educators step back and consider how they can most effectively prepare students for practice. It has several potential uses. It could serve as a road map for a partial or complete review of a law school's program of instruction. It could also help individual teachers improve course design, delivery of instruction, and assessment of student learning. Most of all, however, we hope the document will facilitate dialogue about legal education among law teachers and between law teachers and other members of the legal profession. A serious, thoughtful reconsideration of legal education in the United States is long overdue.

The principles of best practices described in this document are based on long-recognized principles of sound educational practices as well as recent research and scholarship about teaching and learning. Our conclusions are based on the most up-to-date information available. Such resources include EDUCATING LAWYERS, the report of a study of legal education conducted by the Carnegie Foundation for the Advancement of Teaching, and the unpublished drafts of chapters for a book being written by Judith Wegner, which contain her personal observations and conclusions as the principal investigator for the Carnegie Foundation's study.

Another resource is information produced from on-going empirical studies by Ken Sheldon and Larry Krieger about the negative effects that current legal educational practices can have on the emotional well-being of our students. Our work was also informed by the progress of the Law Society of England and Wales as it continues developing a new training framework for solicitors, including a description of the knowledge, skills, and values that new solicitors should have on their first day in practice. Additionally, we tracked and incorporated developments in the professionalism movement, a successful experiment using standardized clients to evaluate lawyer performance in Scotland, evolving theories from cognitive scientists and educational theorists about teaching and learning, current trends in evaluating institutional success, new techniques for assessing student learning, including electronic and other types of portfolios, and many other new initiatives.

The principles of best practices described in this document are based on the following assumptions about legal education in the United States:

1. Most new lawyers are not as prepared as they could be to discharge the responsibilities of law practice.
2. Significant improvements to legal education are achievable, if the issues are examined from fresh perspectives and with open minds.
3. The process for becoming a lawyer in the United States will not change significantly.[1]

The Best Practices Project was motivated in large part by our concern about the potential harm to consumers of legal services when new lawyers are not adequately prepared for practice. We are also concerned about helping law school graduates to succeed in law practice and to lead satisfied, healthy lives.

[1] If there is any possibility that the third assumption is invalid, we would encourage the legal profession to reconsider the entire continuum of educating and training lawyers in the United States. This book examines how the law school years might be used more effectively, but even the most effective law school program cannot fully prepare new lawyers for practice. Post graduate education and training needs to become more rigorous and sophisticated.

Since its inception, the United States' model of legal education has been criticized as serving only some of the educational needs of new lawyers.[2] Since the 1970's, numerous groups of leaders of the legal profession and groups of distinguished lawyers, judges, and academics have studied legal education and have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services.[3] The depth and seriousness of defects in legal education in the United States were summarized by Greg Munro:

> These critics did not focus on peripheral matters, but rather identified defects that go to the core and structure of legal education. They are the problems of ignoring the constituencies a law school serves, not knowing what lawyers do, what law students need to learn, how law students learn best, what teaching methods are most effective, how to determine whether students have learned, what responsibilities the law school has to the profession and society, and how the school knows it is discharging these responsibilities. They are the same core problems that have plagued American higher education and have prompted demands for reform.[4]

Former Secretary of Education William J. Bennett said "we are uncertain what we think our students should learn, how best to teach it to them, and how to be sure when they have learned it."[5] Gary Bellow characterized the deficiencies in our system of legal education as "indefensible."

> Al Sacks once said to me: 'Well, it seems to me that what you're saying is that law school is empirically irrelevant, theoretically flawed, pedagogically dysfunctional, and expensive.' And I am, of course, saying just that. When you add to these deficiencies, the incoherence of the second- and third-year course offerings, the amount of repetition in the curriculum, the degree to which unacknowledged ideology pervades the entire law school experience and the fact that no graduate of an American law school is able to practice when graduated, you have a system of education which, I believe, is simply indefensible.[6]

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[2] *See, e. g.*, William V. Rowe, *Legal Clinics and Better Trained Lawyers – A Necessity*, 11 ILL. L. REV. 591 (1917); SUSAN BOYD, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR (1993); ROBERT STEVENS, LEGAL EDUCATION IN AMERICA: FROM THE 1850'S TO THE 1980'S (1983).

[3] A fairly comprehensive discussion of the state of legal education and criticisms of it up to 1980 can be found in various footnotes in H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering:" A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397 (1980). More recent articles are noted in Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 238, n.4 (2001).

[4] GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 46, n.113 (2000). A more recent book is PHILIP C. KISSAM, THE DISCIPLINE OF LAW SCHOOLS (2003). Kissam describes the paradoxes in legal education in which intentions and practices seem to be at cross-purposes, and he depressingly holds out little hope for significant change.

[5] William J. Bennett, *Foreword*, ASSESSMENT IN AMERICAN HIGHER EDUCATION: ISSUES AND CONTEXTS. at I (Clifford Adelman ed., 1986).

[6] Gary Bellow. *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 622-23 (1983).

In the history of legal education in the United States, there is no record of any concerted effort to consider what new lawyers should know or be able to do on their first day in practice or to design a program of instruction to achieve those goals. The Carnegie Foundation for the Advancement of Teaching conducted a study of legal education that ended in 2006. It "discovered that faculty attention to the overall purposes and effects of a school's educational efforts is surprisingly rare."[7]

The authors of the Carnegie Foundation's report recognized that some changes have occurred in legal education but not the comprehensive, systemic changes that are needed.

> And, indeed, over the past decade, important changes have been taking place. Compared to fifty years ago, law schools now provide students with more experience, more context, more student choice, and more connection with the larger university world and other disciplines. However, efforts to improve legal education have been more piecemeal than comprehensive. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these inadequacies on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned pleas of the national bar antedates our investigation.[8]

Legal educators generally ignore long-recognized basic principles of curriculum development, which involves four stages:

Stage 1:	Identifying educational objectives that the school or course should seek to attain.
Stage 2:	Selecting learning experiences that are likely to be useful in attaining those objectives.
Stage 3:	Organizing the selected learning experiences for effective instruction.
Stage 4:	Designing methods for evaluating the effectiveness of the selected learning experiences.[9]

The disinclination of law teachers to engage in critical thinking and debate about legal education is especially surprising when one considers that our model of legal education has not been in place very long. It was not until the 1960s that our structure of four years of college followed by three years of law school was firmly established.[10]

It is time for legal educators, lawyers, judges, and members of the public to reevaluate our assumptions about the roles and methods of law schools and to explore new ways of conceptualizing and delivering learner-centered legal education. We agree with the authors of the Carnegie Foundation's report that the changes we need to make are substantial.

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[7] William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, Educating Lawyers 98 (Draft July 2006).

[8] *Id.* at 243.

[9] *See, e.g.*, Ralph Tyler, Basic Principles of Curriculum and Instruction (1949).

[10] Stevens, *supra* note 2, at 209.

> A more adequate and properly formative legal education requires a better balance among the cognitive, practical, and ethical-social apprenticeships. To achieve this balance, legal educators will have to do more than shuffle the existing pieces. It demands their careful rethinking of both the existing curriculum and the pedagogies law schools employ to produce a more coherent and integrated initiation into a life in the law.[11]

It is no easy task to consider how to improve legal education even if all concerned agree there is a need for improvement. Generations of debate have not resolved the relative merits of a liberal, general education versus a technical, professional orientation for the practice of law. Nor will we ever be able to reach universal agreement about the specific knowledge, skills, and values that law schools should teach if for no other reason than the vastly diverse practice settings in which our graduates work. There are some fundamental things about which we should be able to agree, however, and we should not refrain from trying to improve legal education simply because the task is difficult. Other countries are reforming their systems of legal education; our attention to improving the preparation of lawyers for practice in the United States is long overdue.

We undertook a thoughtful and deliberate search for ways to improve legal education that are consistent with sound educational theories and practices. We hope our final product has achieved these goals, though some of our proposals call for significant changes in the content and organization of the law school curriculum and in the attitudes and practices of law teachers.

This is a large document, unavoidably so because preparing students for practice is a complex project. Despite its size, it provides only a broad overview of most of the topics it addresses. Entire books have been written about the concepts contained in almost every page. Thus, reference to many outside sources is required to acquire a complete understanding of the problems and possible solutions.

Many of our recommendations do not have any cost or time implications, and others have none beyond the initial effort involved in making the transition from current practices.[12] Certainly, schools that decide to offer the best possible learning experiences for their students may want to have smaller student-faculty ratios than today's typical law school. Moreover, they might expect their faculties to devote more time to educating students than current practice.

Graduate professional education should have lower student-faculty ratios than the current norm in law schools in the United States. As one scholar wrote, "Langdell's perhaps greatest coup was his persuasion of universities that legal education was inexpensive."[13] Sandy D'Alemberte observed that "[l]aw schools have not had the teaching resources of our other graduate programs, and they do not have

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[11] SULLIVAN ET AL., *supra* note 7, at 180.

[12] In fact, the law schools in the United States that appear to be the most student-centered and committed to preparing students for practice have relatively modest budgets. We considered naming schools that have made an institutional commitment to preparing students for practice and have taken significant steps toward that objective. We decided not to do so, however, because we did not have valid selection criteria.

[13] Christoph G. Courchesne, *"A Suggestion of a Fundamental Nature:" Imagining a Legal Education of Solely Electives Taught as Discussions*, 29 RUTGERS L. REC. 21, 60 (2005) (citing STEVENS, *supra* note 2, at 268).

the resources of the professional school programs – even those which terminate with a community college degree. This should suggest something to us – nobody does things the way we do. We're probably the group that's out of step."[14] Even without improving student-faculty ratios, however, we believe significant improvements are possible. One of our basic tenets is that law schools should become more student-centered and should recognize and reward good teaching more than most do today.

The changes we recommend should have a positive impact on legal scholarship. If law teachers begin giving more thought to how students learn as well as what lawyers do and how they do it, new avenues of legal scholarship will be opened beyond the traditional scholarship about doctrine and judging.[15] These new directions in scholarship are more likely to involve interdisciplinary work than traditional legal scholarship and strengthen law schools' claims that they are worthy members of research universities.

We hope the completion of the drafting phase will mark the beginning of a process of discussion, debate, and implementation of the principles discussed in this document – or other principles that will promote improvements in legal education. We also hope, as Gary Bellow did, that "our discourse be real discourse – concerned with normative values, not the justification of the system that currently exists."[16]

We acknowledge that any description of "best practices" will soon be eclipsed as we refine our understanding of the desirable goals of legal education and how to achieve them. That is how it should be.

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[14] Talbot D'Alemberte, *Talbot D'Alemberte on Legal Education*, 76 ABA J. 52, 52 (Sep. 1990).

[15] For suggestions of where such scholarship may lead, see Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 391-96 (1995); Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980).

[16] Bellow, *supra* note 6, at 623.

Executive Summary and Key Recommendations

Developing a Statement of Best Practices (Introduction and Chapter One)

There is a compelling need to change legal education in the United States in significant ways. Law schools do some things well, but they do some things poorly or not at all. While law schools help students acquire some of the essential skills and knowledge required for law practice, most law schools are not committed to preparing students for practice. It is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better.

Our key recommendations for improving legal education are listed below. One can quickly grasp the full breadth of our recommendations by reviewing the table of contents.

We divide our discussion of best practices into seven categories: 1) setting goals, 2) organizing the program of instruction, 3) delivering instruction, generally, 4) conducting experiential courses, 5) employing non-experiential methods of instruction, 6) assessing student learning, and 7) evaluating the success of the program of instruction. We also include an example of a "model" best practices program of instruction.

We call on law schools to make a commitment to improve the preparation of their students for practice, clarify and expand their educational objectives, improve and diversify methods for delivering instruction, and give more attention to evaluating the success of their programs of instruction. The importance of accomplishing these goals was explained by Greg Munro:

> A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence. If a school does not assess its performance, it can easily be deluded about its success, the effectiveness of its pedagogical methods, the relevance of its curriculum, and the value of its services to its constituencies. A law school that fails to assess student performance or its performance as an institution, or that uses the wrong measures in doing so, has no real evidence that it is achieving any goals or objectives. A law school that lacks evidence of achievement invites demands for accountability.[17]

It may not be possible to prepare students fully for the practice of law in three years, but law schools can come much closer than they are doing today. It is

[17] MUNRO, *supra* note 4, at 3-4.

especially important for law schools to make an institutional commitment to do the best they can to prepare their students for practice.

An important step is to articulate clear educational objectives for the program of instruction and, preferably, to describe those objectives in terms of desired outcomes. Outcomes-focused education is becoming the norm throughout higher education. In fact, regional accrediting agencies are requiring institutions of higher education, including some law schools, not only to state educational outcomes but also to prove that their students are attaining those outcomes.[18] Legal education programs in the United Kingdom and other countries have outcomes-focused curriculums, and a few law schools in the United States are making progress toward becoming outcomes-focused. It is time for all law schools to make the transition.

Descriptions of desired outcomes of legal education should include statements of what graduates should know, what they should be able to do, and how they should do it. We describe some general outcomes that all law schools should seek to achieve as they try to develop basic competence.

The key recommendations in this document are set forth below.

Setting Goals (Chapter Two)

1. Law schools should demonstrate a commitment to preparing their students for bar examinations and for law practice. They should engage in a continuing dialogue with academics, practitioners, judges, licensing authorities, and the general public about how best to accomplish this goal.

2. Law schools should clearly articulate their educational goals and share them with their students.

3. Law schools should shift from content-focused programs of instruction to outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.

4. The primary goal of legal education should be to develop competence, that is, the ability to resolve legal problems effectively and responsibly.

5. Law schools should help students acquire the attributes of effective, responsible lawyers including self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of law, professional skills, and professionalism.

Organizing the Program of Instruction (Chapter Three)

6. Law schools should organize their curriculums to develop knowledge, skills,

[18] *See, e.g.*, Standards 2 & 4, Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities, Handbook of Accreditation (2001), *available at* http://wascsenior.org/wasc/Doc_Lib/2001%20Handbook.pdf (last visited September 19, 2006) [hereinafter Western Association Accreditation Handbook].

and values progressively; integrate the teaching of theory, doctrine, and practice; and teach professionalism pervasively throughout all three years of law school.

Delivering Instruction (Chapters Four, Five, and Six)

7. Law schools should use teaching methods that most effectively and efficiently achieve desired educational objectives, employ context-based instruction throughout the program of instruction, and employ best practices when using any instructional methodology.

8. Law schools should create and maintain healthy teaching and learning environments.

9. Law schools should enhance the quality of their programs of instruction with technology and by making appropriate use of practicing lawyers and judges.

10. Law schools should have effective teacher development programs and establish learning centers.

Assessing Student Learning (Chapter Seven)

11. Law schools should use best practices for assessing student learning, including criteria-referenced assessments, multiple formative and summative assessments, and various methods of assessment.

Evaluating the Success of the Program of Instruction (Chapter Eight)

12. Law schools should regularly evaluate their effectiveness and use best practices for conducting such evaluations.

Many of our recommendations do not have cost or time implications. and others have none beyond the initial effort involved in making the transition from current practices. It will require hard work and, perhaps, additional or reallocated resources to implement some of our recommendations. We are convinced, however, that the major impediment to reforming legal education is a lack of vision and commitment, not a lack of resources. Hopefully, this document provides some of the needed vision and will inspire more people to become committed to implementing positive changes in legal education.

Appendix 7

TASK FORCE MANDATE

To,

- review the criteria currently in place establishing the approved LL.B/ J.D. law degree for the purposes of entrance to law societies' bar admission/ licensing programs ("the approved LL.B./J.D. degree") and determine whether modifications are recommended;
- if modifications are recommended, propose a national standard for the approved LL.B./J.D. degree; and
- consider the matters in (a) and (b) in relation to the National Committee on Accreditation requirements for granting a certificate of qualification and determine what changes if any should be made to those requirements. By articulating standards for the approved LL.B./J.D. law degree the Federation can more clearly identify for foreign trained candidates and those with civil law degrees from Quebec the meaning of "equivalent to a Canadian LL.B./J.D. degree."

Appendix 8

An Overview of Canadian Common Law Legal Education (LL.B./J.D. Degrees)

Council of Canadian Law Deans

May 2008

INTRODUCTION

Over the past number of decades, Canada has established an outstanding system of legal education. In contrast to many other jurisdictions, law schools in Canada today are generally all of very high quality, with their graduates being highly sought after by both public and private employers, not only in Canada but internationally. Canadian legal education is a model that is both widely envied and emulated.

Despite these successes, Canada's law schools are constantly striving to improve the quality of the education they provide. The Council of Canadian Law Deans (CCLD) welcomes the opportunity to present this Working Paper outlining the overall goals and mission of Canadian legal education; a discussion of the necessary skills, competencies and knowledge necessary to accomplish these goals; and an identification of some of the institutional requirements required in order to impart these skills and competencies to our graduates. Our hope is that this Working Paper can contribute to a dialogue that will lead to further enhancements in the quality of the education we provide.

It should be noted that this Working Paper does not attempt to address the full range of issues impacting the legal profession that are presently being considered by the *National Task Force on Accreditation of Canadian Common Law Degrees* (the "National Task Force") or the *Licensing and Accreditation Task Force* of the Law Society of Upper Canada. Nevertheless the CCLD is prepared to engage with both of these Task Forces on other issues of mutual interest, beyond those discussed in this Working Paper.

The Emergence of University-based Common-Law Legal Education in Canada [1]

Historically, Canadian lawyers were trained almost exclusively under an apprenticeship model. In 1883, Dalhousie Law School was founded in Halifax, and the Law Society of Nova Scotia accepted graduates from its program for admission to practice. In Ontario, since the creation of the Law Society of Upper Canada (LSUC) in 1797, admission to the bar requires a combination of apprenticeship and attendance at lectures (intermittently compulsory or voluntary) and examinations. In 1889, the LSUC established a permanent law school, later known as Osgoode Hall Law School. While several law faculties at Ontario universities were established during that era, admission to practice required attendance at Osgoode Hall. During this time, Ontario debated the issue of legal education and whether it should be aimed primarily at "intellectual development or at vocational preparation".[2]

University law faculties or schools of law were established in each of the western provinces between 1912 and 1915, either under the control of the provincial law society or in affiliation with it. The development of legal education in Quebec followed that of the other provinces, though permanent law faculties were established at McGill in 1853 and Laval in 1857.

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[1] While recognizing Canada's two legal systems, for the purposes of this Report, our review of the development and current status of legal education is restricted to Common Law (LL.B. and J.D.) programs, and does not consider Civil Law programs.

[2] David A.A. Stager with Harry W. Arthurs, *Lawyers in Canada*, (Toronto: University of Toronto Press, 1990), (Chapter 4: The Law Schools) 86.

The shift to university-based legal education developed primarily post World War II. During this period there was a dramatic growth in post-secondary education generally, fuelled by returning veterans and government policies designed to foster much broader participation in higher education in Canada. In addition to this general trend in higher education, the Canadian legal education landscape was influenced by developments in the American legal education system at that time. Specifically, the American legal profession emphasized law schools for legal training; many early Canadian legal scholars studied in the U.S. and were thus exposed to this trend. In 1957 the LSUC agreed that it would require a university law degree for admission to practice and law faculties were, thereafter, established across Ontario. By 1960, the mandatory requirement of a university law degree for admission to practice was in place in all provinces.[3]

During subsequent decades, law schools were created in Calgary, Moncton, Victoria and Windsor. A seminal development was the 1983 publication of *Law and Learning,* the Report of the Consultative Group on Research and Education in Law, headed by Harry Arthurs.[4] *Law and Learning* criticized what was then the dominant approach in law schools, focusing largely on a doctrinal approach to legal education. While doctrinal legal education remains important and central to legal education in Canada, *Law and Learning* fostered the emergence of scholarly, research-oriented and interdisciplinary approaches to legal education.

At present, all provincial law societies in Canada require candidates for admission to have a three-year Bachelor of Laws (LL.B., or more recently, J.D.) degree from an approved Canadian university, or its equivalent. Law schools, now playing a significant role in the development of Canada's legal professionals, are today "rooted in the university system of each province and formally independent of the law societies."[5]

As indicated in the 2007 Carnegie Foundation report, similar to other professional schools, "law schools are hybrid institutions. One parent is the historic community of practitioners, for centuries deeply immersed in the common law and carrying on traditions of craft, judgement and public responsibility. The other heritage is that of the modern research university".[6]

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[3] Theresa Shanahan*, "A Discussion of Autonomy in the Relationship Between the Law Society of Upper Canada and the University-Based Law Schools"* (2000) The Canadian Journal of Higher Education, Volume XXX, No 1, 27 at 38; and Stager, ibid, 86.

[4] Social Sciences and Humanities Research Council of Canada, *Law and Learning / Le droit et le savoir: Report of the Consultative Group on Research and Education in Law* (Ottawa: The Council, 1983).

[5] Stager, *ibid*, 89.

[6] William M. Sullivan et al. *Educating Lawyers: Preparation for the Profession of Law* (The Carnegie Foundation for the Advancement of Teaching) (2007) 4.

I: MISSION, GOALS AND VALUES OF CANADIAN LEGAL EDUCATION

This section identifies the mission, goals and values of law schools in Canada today.[7] As discussed above, becoming a legal professional in Canada requires a university-based legal education. A legal education is thus most obviously an education of interest to those who wish to become lawyers, as well as others. Providing a quality legal education is a multifaceted endeavor, since the legal system is more than the current understanding of legislation and common law: it is a "human process that cannot be understood apart from its social, economic, political, historical and practical context."[8] Insofar as a professional must attempt to understand the law in order to begin to work effectively in the legal system, a legal education entails a *liberal education*, as well as a *professional education*.

Professional Education

Legal professionals must be sufficiently expert in legislation and common law to ably provide legal services to clients who cannot, for a variety of reasons, analyze the worth of that service. A professional education, however, must go beyond imparting a detailed understanding of the law as it stands.

Professionals, owing to the importance of their abstruse knowledge to their clients, as well as the importance of the legal system working well for society at large, must: maintain the highest of ethics in personal practice; be responsive to changes in the legal system; and be champions of the future of the legal system. A professional education must provide lawyers the tools to do so.

Liberal Education

A liberal education in law goes beyond a simple understanding of the 'legal facts' as they are, and attempts to situate the facts in a broader context: to view the bald facts through a variety of lenses, to examine paths not taken, to evaluate the *status quo*, to predict future developments in the law, and evaluate alternatives.

A liberal education is committed to the development of a reasoned examination of the world at large as well as a reasoned examination of alternative points of view, both for the intrinsic value of being exposed to those alternative points of view, as well as the respect for others that can be fostered in a respectful environment.

Lifelong Learning

The law constantly evolves, and lawyers must be in a position to assess and understanding emerging trends in the law. Moreover, professionals have to be aware of the limits of their knowledge: a more nuanced understanding of an old area of the law is

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[7] In broad outline this section draws upon materials, including Strategic Plans, Curricular Reform Reports, Degree Level Expectation Reports, Internal and External Reviews, from McGill University Faculty of Law, Osgoode Hall Law School, Queen's University Faculty of Law, University of New Brunswick School of Law, University of Ottawa Faculty of Law (Common Law Section), Université de Sherbrooke Faculty of Law, University of Saskatchewan College of Law, University of Toronto Faculty of Law, University of Victoria Faculty of Law, University of Western Ontario Faculty of Law and University of Windsor Faculty of Law.

[8] *External Review Process Self-Study Document: Faculty of Law University of Victoria,* 2005, p. 3.

always possible. Law schools have an obligation to do what they can to give students the tools they will need to be engaged in self-directed study, and the desire to do so.

Multiple Perspectives
A significant component of successful legal practice is anticipating what others want, or what others see as a just result, and responding appropriately. Insofar as exposure to different points of view aids in this, a law school should provide future practitioners as much exposure to other points of view as possible.

A deep understanding of other world-views requires respectful critical engagement: it is too easy to end up with a caricature of a view that you do not hold. Moreover, a key tenet of a liberal education is that you never really understand someone until you know not just what they think, but why they think it.

Exposure to a multiplicity of critical alternative perspectives also reinforces and refines one's own perspective, insofar as one is forced to defend a position or modify it in face of a fatal criticism. Exposure to alternative points of view is a necessary component of an adequate liberal and professional education.

Diversity
A commitment to the presentation of multiple perspectives entails a commitment to those perspectives being embodied both in their faculty and in their student body. This diversity is also independently required by the normative commitments of a liberal education.

Realism
It is a trite observation that lawyers are engaged in the *practice* of law: a legal education must aim to provide a variety of situations in which law students can 'get a feel' for the practice of a lawyer.

Innovation
Striving to keep on top of a changing legal system requires a commitment to ensuring that novel perspectives on law are available to students, as well as the newest methods whereby the law can be researched.

Excellence
Insofar as the lawyers graduating from a law school need to be as professional as they can over the course of their careers, then law schools would fail their students if they did not constantly strive to provide the best education that they can.

II: COMPETENCIES, KNOWLEDGE, SKILLS AND EXPECTATIONS

Given this mission, along with these goals and values, what are the competencies, knowledge, skills that law schools attempt to impart to their graduates? This section identifies the relevant competencies, knowledge and skills expected of law graduates in Canada today including, where appropriate, the competencies described in the National Task Force's November 2007 draft discussion paper (the "Discussion Paper"). [9] In our

[9] *National Task Force on Accreditation of Canadian Common Law Degrees*, *Discussion Paper* (November 2007), 14 and 40-41.

view the Ontario Council of Academic Vice Presidents' *Guidelines for University Undergraduate Degree Level Expectations* provides an appropriate framework in which to discuss these competencies, knowledge, and skills.

Depth and Breadth of Knowledge

Depth and breadth of knowledge compete against one another when aiming to produce a lawyer well-versed in the law. A student who has been well-versed only in a particular area of law has likely sacrificed becoming well-versed in the law as an entire system of rules, doctrines, principles and precepts.

Canadian law graduates are expected to acquire in-depth knowledge as well as knowledge spanning the breadth of law and legal doctrine. All undergraduate common law degree programs in Canada (LL.B. or J.D.) require instruction in Constitutional Law, Contract Law, Property Law, Criminal Law, and Tort Law, thereby requiring knowledge of these significant areas of the Canadian Law. This provides understanding of the foundations of the common law, including doctrines, principles and sources of common law; how it is made and developed; the institutions within which it is administered in Canada; contracts, torts, property law, Canadian criminal law, civil procedure, Canadian constitutional law (both division of legislative powers and human rights, including *Charter* values) and equitable principles of fiduciary obligations, trusts and equitable remedies. Students are also expected to undertake a wide range of both generalist and specialist courses, thereby providing them with an understanding of the complexity of law and the interrelationship between different areas of legal knowledge.

Professionals are held to ethical standards, and need to not simply know the rules, but develop skills applying them. Many law schools require the study of ethics in a separate course or program as a way to incorporate such skills, while others incorporate such ethical reasoning while studying substantive course materials.

Knowledge of Methodologies

There must be a commitment to teaching not only the subject matter of a course, but also teaching students to 'think like a lawyer', including a multiplicity of critical alternative perspectives and exposure to alternative views. This is achieved, though not exclusively, by use of the case study method during substantive courses, by an awareness of argument by analogy, by inviting practicing lawyers to give talks or teach courses, and by encouraging classroom debate about the merits and demerits of legal decisions, doctrines, or evolutions.

Students are expected to acquire knowledge and understanding of principles of statutory analysis and regulatory and administrative law, as well as of legal research skills and oral and written communication skills specific to law. Students are taught to 'research like a lawyer': to efficiently navigate common electronic and print legal sources. This is achieved by legal research and writing, clinical work, moot court competitions, essay options for seminars or lectures, and by way of directed research, which results in a scholarly paper.

Application of Knowledge

Lawyers must be able to competently apply the knowledge gained in law school in a variety of situations: providing clients with advice in the face of a particular fact pattern, drafting documents designed to safeguard the client in the future, drafting documents

required by the courts, interpreting legal documents, to present their client's position in arbitrations, and courts, etc.

Lawyers must, therefore, not only be able to objectively analyze and synthesize information, but also to present the law in a way that emphasizes the strengths and weaknesses of their client's situation.

Communication Skills
Communication skills are particularly important in a profession that depends on effective drafting, persuasion, and the giving of clear legal advice. Students are expected to acquire knowledge and understanding of oral and written communication skills specific to law and dispute resolution and advocacy skills (with knowledge of their evidentiary underpinnings). Students, in short, need to be competently persuasive, as well as competent at objectively assessing costs and benefits. This includes an awareness and understanding of multiple perspectives and a commitment to diversity. These competencies or skills are developed via small group seminars, clinical experience, mooting programs, research papers, exams, volunteering opportunities, as well as by close interaction with practitioners and faculty members and critical discussions in the classroom.

Awareness of Limits of Knowledge
Effective advice and risk management requires an understanding of the inherent uncertainties in the legal system. Students must become skilled in recognizing and assessing situations where courts might make surprising decisions, or where the law is simply unclear, or under-developed. Analysis of the historic developments in the law, and an emphasis on the quite reasonable paths not taken by courts, or legislatures, are one way in which students begin to recognize the limits of knowledge of the legal system.

Professionals must also be constantly aware that however much law is learned, there is still more to know. Law students must be aware not only that knowing the law will only take one so far, but also that one never knows the entire law. This humility is inculcated not only by the very position of being a student, but also through interaction with expert faculty and practitioners all of whom profess the same humility.

Autonomy and Professional Capacity
A student's ability to choose the particulars of his or her own education is one of the most significant autonomous choices in his or her budding legal career. In light of the ever-changing face of legal practice, and a legal education's need to be responsive to such changes, this is a significant feature of a legal education.

Skillfully navigating though the ethical dilemmas in which lawyers find themselves is aided by the voluntary adherence to a Faculty code of conduct, courses on ethics, ethical dimensions of courses in substantive law, clinical programs, pro bono opportunities, and interaction with practitioners and faculty members. A commitment to public service is inculcated through courses in ethics, clinical work, pro bono opportunities, and interaction with practitioners and faculty members.

III: INSTITUTIONAL REQUIREMENTS AND CHARACTERISTICS

To successfully meet the overall goals of delivering a legal education, and providing students with the skills, competencies and knowledge required of future legal professionals, emphasis at Canadian law schools is given to a variety of institutional features or requirements, including:

- Faculty;
- Curriculum;
- Fostering Intellectual and Research Communities;
- Library and Other Facilities; and
- Student Support Services.

To monitor many of these activities, and the level of student engagement within law schools, several Canadian law schools now participate in the Law School Survey of Student Engagement (LSSSE).[10]

Faculty

The single most important element underpinning the quality of Canadian legal education is the strength of the faculty at Canadian law schools. Virtually all faculty hired in the past decade at Canadian law schools hold advanced level law degrees (at least an LL.M., and increasingly a Ph.D in law.) Faculty members often hold advanced degrees in other disciplines, in addition to advanced degrees in law. Members of Canadian law faculties are all legal scholars, with the capacity and expectation that they will significantly contribute to the creation and dissemination of legal knowledge, both to the benefit of the legal profession, as well as society at large. All faculty members are expected to publish regularly in peer-reviewed academic journals.

To constantly strive for excellence, and ensure that law school courses offered reflect the ever-changing landscape of law, active recruitment of the best legal scholars is required. Moreover, to facilitate meaningful interaction with students, the faculty/student ratio must be as low as practicable. As well, flexibility to develop new course offerings is important to both individual faculty members and law schools as this enables new areas of knowledge to open up and become part of the law school and professional learning process.

In order to provide an education sufficiently versed in alternative points of view, faculty, as a whole, should be versed in social science and humanities and should be interdisciplinary.

Attracting top-notch faculty members, and honing the skills of contemporary faculty members, requires a commitment to professional development. Funding available for conference participation and research assistance are but two of the most obvious ways in which this need may be filled. Active speaker programs and an effective method of becoming aware of opportunities in the wider university community also valuably assist in this regard. Faculty members today regularly apply for and receive funding from peer-reviewed councils and agencies.

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[10] Canadian law schools began participating in the LSSSE in 2005. In 2007, eleven law schools participated in the annual survey: UBC, Dalhousie, Manitoba, New Brunswick, Osgoode, Ottawa (Common Law), Saskatchewan, Toronto, Victoria, Western and Windsor.

Canadian law schools recognize the wealth of knowledge and skills of members of the legal profession and regularly include adjunct professors from the local bench and bar as part of the Faculty complement.

Curriculum
Any legal education that does not provide an introduction to the basic areas of the law in Canada would do a disservice to its students. All undergraduate common law degree programs in Canada (LL.B. or J.D.) require instruction in Constitutional Law, Contract Law, Property Law, Criminal Law, Civil Procedure and Tort Law.

A law school curriculum should, as far as practicable, offer a variety of courses, allowing as diverse a number of law programs to develop as there are different careers in the legal system. Depth of knowledge in a particular area of law is also achieved by the offering of courses which build on one another, in which interested students can devote themselves to particular areas of the law.

Law school curriculums best serve their mandates when they include:

- Small group work, in which students are encouraged to interact with each other and the professor.
- Perspectives options, in which non-legal perspectives inform a more nuanced appreciation of the law.
- Written work, both traditionally legal versions (memos, etc.) and academic papers.
- Directed research papers
- Moots
- Visiting faculty program
- Combined degrees
- Perspectives on law
- Professional ethics
- Courses on legal research and writing
- Elective courses.

Fostering Intellectual and Research Communities:
In accordance with the goal of providing a liberal education as well as a professional education in law, all Canadian law schools strive to foster intellectual and research communities. In part this is accomplished through the development of seminars, conferences, and workshops on legal and other topics. But increasingly, law schools have created organized research units, institutes or centres (ORUs) organized around subject areas or themes. These ORUs provide a focus for intellectual activity within the institution, and foster the development of legal scholarship and critical inquiry amongst both faculty and students.

Related to this is the growth of graduate legal education in Canada. A decade ago there were relatively few graduate law programs in Canada. Today the majority of Canadian law schools offer graduate education in law, often at the doctoral level. The emergence

of distinct Canadian graduate education in law complements and reinforces the development of a research culture at Canadian law schools.

A third, related development is the emergence of joint degree programs with other disciplines. Most Canadian law schools now offer the opportunity for law students to earn a graduate degree in another discipline while completing their law studies, thereby contributing to the intellectual community within the law school.

Library and Other Facilities

The quality of the law library directly affects the quality of a legal education: well organized superior collections, able support, and physical space in which to research, reflect, and write, are essential for a successful legal education. Professional librarians support teaching and research within the law faculty, and have established criteria and standards within which to perform their responsibilities.

A law school needs more than books and the space to research: casual, but learned conversations, the community necessary to foster a sense of professional allegiance, and spaces in which to produce group projects are as important in coming to an understanding of the legal system as having reference materials in a central location. A law school should aspire to provide space in which students and faculty members can gather and discuss legal issues: providing the forum for a scholarly community to flourish. In addition, law schools further advance an intellectual environment and serve as gathering places. Specifically, law schools regularly offer the opportunity for leading members of the profession to meet and gather with faculty and students, through speakers programs, information sessions and other related lectures.

Student Support Services:

It almost goes without saying that computer technology is becoming a central component of legal practice, as well as a more effective teaching aid. Making these technologies available, and effectively training both students and faculty members in their use, is a necessary part of a contemporary legal education, in such an ever-changing technical landscape.

Law students are, for the most part, aspiring professionals. To attract the best and the brightest, more than mere academia is necessary. Career services are an essential component of a law school bent on producing lawyers well-equipped to enter the profession.

Given the unfortunate reality that many voices are marginalized, an adequate representation of the voices should be encouraged both financially, as necessary, as well as though institutional supports which make each law school a welcoming and attractive environment. Canadian law schools strive for accessibility with strong financial assistance and other support programs for admitted students.

Dear members of the Federation of Law Societies of Canada Task Force on Accreditation of Canadian Common Law Degrees,

Thank you once again for giving us the opportunity to discuss your November 2007 Draft Discussion Paper with you in person. We look forward to continued discussions on the nature and content of that report, and the consultation report that you expect to issue in June.

As we noted at our meeting, our ad hoc working group is not a formal representative group of law faculty members in Canada. We hope that a broader range of legal academics will continue this discussion at the meetings of both the Canadian Association of Law Teachers and the Canadian Law and Society Association in Montreal at the end of May and in early June.

In this letter, we aim to do three modest things. First, we sketch the context which regulates and constrains university legal education. The purpose of this section is to counter any perception that the law faculties design our curricula and pedagogical approaches in a regulatory vacuum. Second, we outline a few suggestions for possible ways in which your task force might consider proceeding under your mandate. This section advocates for a shift from "courses and competencies" to a responsive, creative, publicly exposed process for the accreditation of law faculties and foreign trained lawyers. Third, we set our suggestions into the broader context of legal education. To that end, we urge the task force to consider its recommendations within the frame of legal education as a life-long pursuit – supported at the outset with university education at a law faculty, but developed significantly by the practicing bar, as reflected through the Federation and the provincial law societies.

The Regulatory Context

The Ontario proposals to establish two new law schools and the recent increase in applications from lawyers trained outside of common law Canada for admission to law practice in common law provinces has posed a regulatory challenge. What are the grounds on which new law schools should be approved and how should an informed assessment of credentials earned outside a Canadian common law province be conducted? The fact that it has been roughly forty years since the last articulation by a law society of the "requirements pertaining to the approval of Law Faculties for the purpose of the admission of their graduates to [a] Bar Admission course"[1] might lead one to think these questions are being raised in the face of a slender and possibly outdated regulatory framework. However, it is important to emphasize that law faculties are subject to a complex array of both formal and informal systems of ordering. Universities, federal ministries with higher education policies, provincial education ministries, and private and public research agencies are some of the entities that have a formal role in structuring legal education. These bodies impose systems of accountability with their

[1] April 15, 1969 amendments by Legal Education Committee of Law Society of Upper Canada.

own measures of excellence and productivity. As well, there are a host of informal norms and practices ranging from market and competitive pressures in both the legal services and higher education markets to globalization and technological developments that have and will continue to shape legal education. Finally, and perhaps most importantly, the questions posed about legal education by these recent demands occur under the rubric of the public interest. While the law societies appropriately are the designated regulatory body with respect to candidates for bar admission, concerns about professional competency and responsibility must be placed alongside a complex and evolving set of public expectations and norms. We elaborate on some of these factors below.

Federal Higher Education Policy. The federal government has played a direct role in shaping higher education in Canada through its setting and monitoring of equity goals under the Federal Contractors Program, funding of research through bodies such as SSHRC and NSERC, institution of programs such as the Canada Research Chair program, and contributions to bursary and scholarship programs such as the Millennium scholarship program. Law schools, like other academic units, have reconfigured their priorities in response to these programs, which increasingly emphasize international competitiveness in higher education markets and the generation of research outputs.

Provincial education ministry regulations – provincial ministries governing postsecondary education provide a process for approval of new degree granting programs. In Ontario, for example, ministerial consent is required to establish a new degree program. This process is governed by the Postsecondary Education Quality Assessment Board, an arm's-length advisory agency which governs the application and assessment process for proposed new University programs and makes recommendations for ministerial consent.

University regulations, guidelines, and expectations. As a consequence of university regulatory structures, Canadian law faculties are regularly required to report on their teaching, research and service activities, to meet stringent standards of peer review, and to achieve measured scholarly and pedagogical results. Indeed, reporting requirements have, if anything, increased over the past two decades. The deans of law faculties are, of course, accountable to the senior university administration. As well, at most law faculties, faculty members are required to submit annual reports in which they itemize their teaching and supervisory responsibilities relating to LL.B., LL.M., and Ph.D. streams, their research grants, publications and public presentations, their service contributions to both the university and the wider communities, including the legal profession, and any distinctions, honours or awards. This information will typically appear in the Faculty's Annual Report and in other presentations to the Faculty Council, the University, and the public. The information will usually be used in the salary review process and allocation of merit pay.

In addition, prior to appointing a new dean, most law faculties undergo an external review, including assessment of their LL.B. and graduate programs and their governance regimes. This review is typically conducted by a committee of senior law professors,

often including deans or former deans from other law schools.2 Additionally, most (if not all) universities provide for an outside external review of all undergraduate programs at specified periods (for example, once every seven years).

In addition to these review processes within law faculties, individual faculty members must meet certain requirements in order to obtain a tenured position and/or promotion at their university. Again, these requirements have become more rigorous over recent decades. In fact, at many Canadian law schools, a Ph.D., or at least an LL.M., is increasingly required in addition to an LL.B./J.D. for appointment into a tenure track position. University regulations vary, of course, and are often the subject of collective bargaining. At the University of British Columbia, for instance, for promotion from the rank of Assistant Professor to that of Associate Professor, law professors must show evidence of "successful teaching" and "sustained and productive scholarly activity".

Pressures arising from within the legal profession. All law faculties have rich relationships with the legal profession. Graduates of the school often have strong ties to their law faculties, and contribute to the faculties through the donation of their time and financial resources. They watch the curricular and pedagogical changes at their alma mater with interest, provide feedback and guidance both formally (through advisory committees of various sorts) and informally (through their connections at the schools). Indeed, a "law faculty" is not a distinct, completely identifiable group of people – rather, it is a cluster of relationships. Many practicing lawyers teach at our law faculties (making them directly members of the law faculty), sit in a representative capacity on our faculty councils, supervise student activities (including clinics and moots), and regularly advise current law students on the directions their legal education might take. Moreover, many tenure-track and tenured law professors are themselves members of one or more provincial law societies. Provincially designed bar examinations naturally influence strongly the form and shape of law faculty curricula and student choice about course selection.[3] To that end, private legal practitioners have quite a strong influence on, and are indeed an integral part of, legal education at the law faculties.

Pressures arising from outside the legal profession. Many law faculty graduates pursue careers outside private legal practice. Some of them serve as policy makers in governments domestically and internationally. Others, to name just a few examples among many, become politicians, journalists, social activists, doctors, or businesspeople. These graduates too continue to have a strong interest in law faculties and, through formal or informal routes, provide input into the design of curricular or pedagogical innovation.

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[2] For an example, the 2006 review of the University of Toronto Faculty of Law is available at (http://www.law.utoronto.ca/documents/general/ExternalReview2006.pdf).

[3] Annie Rochette and W. Wesley Pue found in their study of UBC law students' course selection that they increasingly chose "core" law courses during the 1990s: "Back to Basics: University Legal Education and 21st Century Professionalism" (2001) 20 Windsor Yearbook of Access to Justice 167.

Pressures from other law faculties. No law faculty operates in a vacuum. Students, faculty, and alumni are keenly aware of the innovations taking place at other Canadian (and non-Canadian) law faculties, and faculties are constantly assessing their curricular and pedagogical development against the legal education offered elsewhere. If interesting developments are taking place in one faculty, undoubtedly students report those initiatives to their law teachers and seek to have similar innovations undertaken at their faculty. Faculty members regularly meet to talk about legal education, and we transfer ideas among ourselves. Faculties that move too far outside the "canon" of legal education as it is evolving are regularly called upon to justify their curricular and pedagogical choices.

Public pressures. In many ways, our most important job as legal educators is to educate graduates who will become sensitive, thoughtful, creative, generous, ethical, professional, and bright members of civil society, regardless of what career path they choose. The general public puts a significant degree of trust into law faculties – that we will graduate students who take their public commitments seriously, who are willing to use their talents in the pursuit of the public good, and who behave at all times with integrity. Not surprisingly, although the general public is the most important group to whom law faculties are accountable, it is the group with the least direct mechanisms for influencing the development of legal education. Fortunately, trends over the last twenty years (including the significant diversification of law students and law faculty members) have made law faculties acutely aware of their obligation to expose students to a wide range of ideas that will assist them in understanding the complex and changing dynamic of Canadian society, the influence of transnational and global forces on the evolution of the Canadian legal, social, and economic landscape, and the importance of ensuring access to justice for the most marginalized members of Canadian society.

Indeed, this latter value, access to justice, lies at the heart of the public interest dimension of legal education. It is not adequate to simply provide an approach to legal education that instills an ethic of public service and professionalism. It is crucially important to "walk the walk" as well as "talk the talk" by actively and continually doing the work of creating a professional legal community that reflects the diverse and complex nature of the "public" in public interest. The "public," when viewed through the lens of access to justice, by definition encompasses a continually evolving and socially diverse set of interests, communities, perspectives, and voices. Thus, at the very least, we would argue that the current stakeholders in the content of legal education, as well as its manner of delivery, include indigenous communities, economically disadvantaged persons, the anti-violence movement, racialized communities, recent immigrants and refugees, lone parents and their children, rural populations, northern communities, and others whose lack of access to justice is part of a broader picture of systemic injustice.

It is within these multi-faceted contexts that legal educators design and provide legal education. Indeed, at any given law faculty, a range of broad overarching objectives for legal education might be articulated, but at most, if not all faculties, the following overarching objectives would be important:

- Legal education should be responsive to, and reflect, a diverse and complex conception of the public interest and law faculties should be accountable to the public;
- Law faculties should be focused on inquiry that sets law in its broad and evolving social, political, and economic contexts;
- Law faculties should provide fertile ground for conversation that will enable students to develop the capacity to contribute to society in a broad range of legal settings, with the ability to move within and between those settings;
- Law faculties should provide a place where students and faculty are able constantly to interrogate the value of the legal education being produced – both substantively and pedagogically;
- Legal education should be responsive to the local communities within which it is situated, and mindful of the broader domestic and international contexts.

Recommendations for the Task Force

We understand that two dominant concerns gave rise to the formation of this Task Force:

1. concerns about the accreditation of new law schools; and
2. concerns about the requirements for granting a certificate of qualification for internationally trained candidates and those with civil law degrees from Quebec.

The Task Force's Draft Discussion Paper proposes to address those concerns by providing a list of required foundations/competencies, contained in Appendix 8. There are serious pedagogical and design concerns with the promulgation of "one size fits all" lists of courses and competencies for the design of legal education, including the following:

- they fail to respect the local environment of any given law faculty;
- they stifle innovation;
- they result in an unnecessary and dangerous narrowing of the curriculum;
- they suggest to students that if they take the courses/have the competencies set out on the list, they are prepared for the practice of law;
- despite best intentions to revisit the list regularly, inevitably lists become ossified (the 1969 list is a good example);
- important items are inevitably left off the list, suggesting (wrongly) they are not important.

There are, of course, other possible approaches to address the concerns raised by the Federation, and tasked to this Task Force.

We recommend bifurcating the response to these two concerns – accreditation of new law schools and recognition of credentials from outside common law Canada – and developing a response that addresses each meaningfully on its own terms. While we recognize that the two issues are interconnected, we feel that significant differences between the two justify a bifurcated response. We outline the contours of our recommendations below.

Accreditation of new law schools

We welcome the formation of new law faculties. We understand that the law societies seek some way of determining whether new law faculties ought to be accredited, such that their graduates would be able to proceed to law society bar admission/licensing processes required for entry to the practice of law. The design of an accreditation process requires a response to two inquiries:

1. who will adjudicate what is an accredited school?
2. which criteria will apply?

On the first question, given that legal education should be responsive to a diverse and complex understanding of the public interest, one sensible response is to constitute a broadly representative committee to process and adjudicate proposals to establish a new law faculty. That committee should be made up of persons drawn from the various constituencies affected by the configuration of legal education, including in particular those who are affected by the access to justice dimension of legal education. Those constituent groups will vary from time to time and thus composition of the committee should be periodically reviewed. The committee's composition might include, in addition to members of the practicing bar, representatives of law deans, legal academics, judges, public interest advocacy groups, legal clinics, indigenous communities, and groups whose geographical location poses barriers to access to justice. There is some precedent for collaborative committees involving law society and law faculty representation in some jurisdictions (Ontario had such a committee in the 1990s), and for law societies nominating individuals to boards with public interest mandates (Legal Aid Ontario would be one example). The committee, once constituted, would need to disseminate the criteria to be applied, as well as to determine the form in which proposals would be submitted and the process by which it would vet proposed programs . While it may be that law societies would need to formally accept or reject such proposals on recommendation from the committee, it should be made clear that the committee would be the decision-making body.

The second question pertains to the criteria that such a committee should apply in its deliberations. It is of critical importance that the design of current law schools should not unduly constrain the design of new ones. As outlined above, all law faculties operate in a heavily regulated context. Those constraints already put enormous pressures on law faculties and impede innovation. Emerging law faculties should be encouraged to embrace innovative curriculum and pedagogical approaches. Indeed, if, as we believe, there are pressing access to justice issues and the status quo is not serving the public interest to the fullest extent possible — a statutory imperative for every law society, as well as a commitment of every university law faculty — it would be wrongheaded to assume that new law schools should fully reproduce existing programs. Given the failure of current legal education and licensing structures to provide adequate numbers of legal practitioners to communities that remain underserved – rural regions and aboriginal communities come to mind – it appears to us that a greater specialization and

diversification would serve the public interest much more than would a centralized standardization. A regulatory model that stipulates a set of skills, competencies and course requirements too easily stifles such growth and does so unnecessarily, given the impressive array of formal and informal rules, norms and pressures holding traditional law school curricula in place.

We recommend an alternative regulatory model that puts in place an aspirational framework to guide the work of the committee. While much work needs to be done to articulate this framework, we provide as a starting point the following list of questions. We view these questions as key to eliciting the kind of information that should form the basis of an approval of a new law faculty. In other words, thoughtful, researched responses to these questions would, in our view, substantially indicate the readiness to begin a new accreditable law program suitable for accreditation.

- What is the underlying theory of your curriculum?
- What particular goals with respect to access to justice do you view as part of the mandate of your proposed institution?
- How will you provide students with access to, and an understanding of, career options?
- How will you build on students' prior knowledge?
- How will you promote facility with all forms of technology?
- How will you promote good practices in teaching?
- How will you support innovative, creative, high quality faculty research?
- How do you plan to foster a sense of community among students and encourage working collaboratively with others?
- How will you build connections with community groups, other university departments, other legal scholars, the practicing profession, alumni, and marginalized communities (including potential students)?
- How will you foster a commitment to life-long learning?
- How does your curriculum build connections between law and its social/economic/political/cultural contexts, and situate law within those contexts?
- How do you plan to provide adequate physical or electronic resources, including library facilities and resources, for your program?
- How does your curriculum reveal law as a dynamic, constantly evolving process?
- How do you develop professionalism and ethics?
- How do you teach good writing and the ability to argue persuasively?
- How do you teach students to read and interpret cases and statutes?
- How does your curriculum promote the development of strong problem solving skills and creative and critical thinking?
- How will you ensure access to legal education, and ongoing support for law students at your faculty?

Not all new law faculties may plan to promote or develop in all of the areas suggested by the questions. However, where that is the case, they should be invited to provide a justification for why they do not plan to develop in that area.

During our discussions, the question was raised about the extent to which existing law schools are currently monitored and reviewed. In terms of ongoing monitoring, law faculties have a peer review process. As mentioned above, law faculties will typically be required to have a comprehensive External Review late in the term of a law dean. All aspects of the Faculty's operations will be reported on and reviewed, including the LL.B. program and curricular changes. The overall objective of the review, which usually includes an on-site visit for two or more days, is to identify strengths and weaknesses and to advise on improvements that might achieve greater strength.[4] The relationship between the law faculty and external communities such as the legal profession will also be assessed.

Our thought is that this external review process could be used to ensure that law faculties continue to have robust answers to the questions listed above .

Certificates of qualification

Certificates of qualification raise entirely different issues from the accreditation of new law schools. Here, rather than applications from new institutions, we are dealing with applications from individuals who have already acquired credentials outside the Canadian common law provinces. We have explained above how concerns about innovation and the constantly evolving and complex nature of the public interest point in the direction of an aspirational regulatory framework for processing applications for proposals to set up

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[4] The Terms of Reference of the 2002 External Review of UBC's Faculty of Law were as follows:

Purpose: *To review the academic strength and balance of the Faculty in teaching, scholarly activity and service; to assess the Faculty's stature; and to advise on future development of the Faculty.*

Terms of Reference

1. To review and evaluate the structure and organization of the Faculty and to advise on how it might be improved to achieve greater academic strength.

2. To review and evaluate the scholarly accomplishments of the Faculty and identify areas that are strong and those that require development.

3. To review and evaluate the organization, and strengths and weaknesses of the LL.B. and graduate programs of the Faculty.

4. To review and evaluate the linkages between the Faculty of Law and other units of the University.

5. To review and evaluate the relationships between the Faculty of Law and other universities, the legal profession, the judiciary, government and the community.

new law faculties. The impetus for our recommendations in this regard is directly tied to our concern about creating a framework that is forward looking and that can respond in a nuanced way to the changes and challenges of the future. The processing of applications from individuals who have already acquired credentials outside the Canadian common law provinces who are seeking to enter the practice of law in a common law provinces raises different concerns. Indeed, here the intuition that we should look at the "precedents," so to speak, and at the existing nature of LL.B./J.D. programs in Canada is entirely warranted. The determination to be made in such situations is whether the individual has a legal education which is "equivalent" to the Canadian LL.B./J.D. degree. Broadly speaking, Appendix 8 is rooted in this approach. However, we do not think that the specificity of "Appendix 8" is workable as a response to this particular issue. First, it fails to capture the existing variety of LL.B./J.D. programs. Second, it risks undermining the objective of ensuring innovation, complexity and responsiveness to social change in the accreditation process via the indirect effect of "ossifying" existing programs in the name of even-handed treatment of candidates with Canadian common law degrees and and those with civil law or non-Canadian common law degrees. Nevertheless, as suggested above, we do think that it makes sense, in terms of logic, common sense and fairness, to measure applications by individuals with civil law or non-Canadian credentials against benchmarks that capture the current state of legal education in Canada.

One approach that we would recommend attempts to articulate, in terms that are more inclusive and flexible than those in Appendix 8, the nature and characteristics of current Canadian legal education. We think the draft paper by the Working Group of the Council of Canadian Law Deans, which provides a descriptive overview of the institutional requirements and characteristics of Canadian law schools, might usefully serve as a starting point for this approach. In particular, Part I of the paper ("Competencies, Knowledge, Skills and Expectations") and Part II ("Institutional Requirements and Characteristics") offer a good foundation for developing benchmarks that are sufficiently flexible to represent the variety of programs currently in existence while at the same time ensuring that civil law and non-Canadian trained candidates for admission to law practice in a common law province are treated fairly in comparison to their Canadian common law trained counterparts. No doubt, as new law schools and programs are developed and accredited in Canada, these benchmarks will have to be updated to reflect those changes and innovations. Thus a mechanism ensuring periodic review will also have to be incorporated into any redesigned regime.

A key aspect of reforms to the "Certificate of Qualification" decision-making process will be enhancing the transparency, consistency, and predictability of the decision-making process.

We would be happy to work with you on the development of further details on how the articulation of these requirements might be drafted.

Concluding Comments: Looking Forward

In an effort to engage productively with the Task Force's Draft Discussion Paper, this submission has responded to what we see to be the two dominant underlying concerns: accreditation of new law schools and certificates of qualification.

In concluding, however, we would like to urge the task force to see its mandate in the light of the broader legal education context. Lifelong learning has always been a critical component of the practice of law. No one graduates from a law faculty full formed and ready to do any legal work, in any Canadian common law jurisdiction, over the next forty years. Instead, we seek to graduate students who will spend their lives developing their skills and competencies.

Given the importance of the issue of legal education (and in this context, we mean not only in the law faculty setting, but legal education as a pursuit undertaken through a lawyer's life), it seems an opportune time for the Federation to consider how to involve its members in a nationally-oriented review of the education provided to practicing lawyers.

One possibility is that the Federation initiate research, which needs to be conducted on the ways in which factors such as globalization, the technological revolution, and an increasingly diverse society have shifted the ground upon which law is practiced and legal education is delivered. We have almost no research addressing these points in Canada. By relying only on anecdotal evidence about the practice of law and legal education, we run the risk of proposing changes that are backward-looking rather than looking to the future. At the very least, it would be useful to conduct research on:

a. emerging trends amongst the practicing bar
b. the needs of the public for legal services, and
c. the changing nature of legal pedagogy, including the importance of moving away from single evaluation, 100 per cent exams, as a measure of success.

One of the trends of the last fifteen years has been the increasing pressure on law faculties to "do it all". As law faculty members, we are constantly engaged in a process of reconsidering what we do in our classrooms, and interrogating the underlying aims of our curricula and pedagogical approaches. Despite the large number of institutional constraints on law faculties' abilities to be responsive to changing social, economic, political, and cultural climates, many faculties have undertaken innovative and interesting reforms. Given the fast pace of social, economic and legal change, innovation and forward-looking reforms are essential to the delivery of high quality legal education.

We would also like to highlight two important differences between Canadian and American legal education. The Carnegie Foundation report is useful in Canada, but it does not reflect our uniquely designed system for legal education.

First, in Canada we have long integrated analytical analysis, practical skill, and professional identity in legal education. We have done this in partnership with the legal profession. The articling process, not present in the U.S. context, has served as the capstone to a Canadian legal education and has provided support for the transition into the full practice of law. That is not to say that students do not receive important skills/practical training while enrolled in Canadian law faculties – in fact, law faculties have increasingly offered skills-based courses in the past couple of decades, and we are engaged in an ongoing process of reviewing the effectiveness of these courses. It is only to say that in Canada we have this intensive period of integration into the practice of law.

To the extent that law societies believe that they can no longer offer meaningful 'on the job' training of practitioners, it is curious that anyone would think that law faculties could better execute that task. Instead, it seems incumbent on the law societies to consider how they can continue to play their partnership role in considering how to provide lawyers with the additional practical skills and substantive knowledge they need to be effective advocates and solicitors. In today's changing legal climate, there are presumably creative ways that practical skills can continue to be developed after students graduate from law faculties. Indeed, it seems antiquated to imagine that one would try to "front load" legal training, cramming it all into three years at a law faculty.

Second, Canadian law faculties face resource constraints not faced by many of our American counterparts. All law faculties have important skills components, but everyone recognizes that many pedagogical methods – including ones emphasizing problem solving, communication skills, collaborative work, significant feedback, and oral advocacy– are expensive to implement. They require lots of time, small classes, high faculty/student ratios and so on. Even assuming that one could teach all of the required analytical and practical skills in law faculties, most Canadian law faculties lack the faculty resources necessary to implement robust programs. Indeed, one only needs to look at the challenges some of the law societies have encountered in mounting skills-based training for lawyers to sense how difficult it is to support this kind of education adequately.

All of this is not to suggest that Canadian law faculties are not taking innovations in higher education seriously, and do not understand our missions within the context of the legal practice (among other contexts). Rather, it is to urge the Task Force to see its mandate within a much broader question of how to educate Canadian lawyers. Legal education has historically been situated as an important partnership of law faculties and the practicing bar. Any efforts that diminish the role of the practicing bar as an important player in the continued education of practicing lawyers should be resisted; as should any inclination to see the law faculties as the sole site for the training and development of legal practitioners.

We thank you once again for the opportunity to participate in this process and hope that this input is helpful.

Ad Hoc Law Professor's Working Group on Law School Accreditation

Appendix 10

ENTRY INTO THE LEGAL PROFESSION – A COMPARATIVE SNAPSHOT

APPROACHES TO STANDARDS IN OTHER JURISDICTIONS

A number of other common law jurisdictions have developed much more defined and "regulatory" statements for determining whether law school graduates will be determined to be qualified to move forward into the licensing stream than has been the case in Canada.

THE 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") developed a rigorous law school accreditation process that spans a number of years, including a period under provisional accreditation.[11] There are currently 196 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 who offer a civil law degree, the quality of whose degrees all fall within a much narrower spectrum than in the United States.

There are U.S. law schools that do not have ABA accreditation. In most jurisdictions a graduate 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;

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[11] 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 the Canadian context, this approach may be significantly more onerous and intrusive than is necessary given a much more limited number of schools, all located in university settings, all government-approved and all relatively similar in quality. It could be expensive to set up and administer.

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.[12]

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

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 treatment should also be given to various defences and to elements of criminal procedure.[13]

England and Wales

The Law Society 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).

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[13] Christopher Roper, (with input from the CALD Standing Committee on Standards and Accreditation), *Standards for Australian Law Schools: Final Report* (Council of Australian Law Deans, March 2008) p.78.

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
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 work-processed text and to present it in an appropriate form.

New Zealand

In New Zealand the only requirements state that as a part of a law degree a candidate for admission as a barrister and solicitor must have passed the following subjects, with the content very generally prescribed:

The Legal System
Contracts
Torts
Criminal Law
Public Law
Property Law
Legal Ethics.