



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Tab 8

**Report to Convocation
April 27, 2017**

**Report on the Federation of Law Societies of Canada
Council and Related Meetings, Quebec City
March 12-14, 2017**

Purpose of Report: Information

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FOR INFORMATION

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

INTRODUCTION

1. The Federation of Law Societies of Canada (the “Federation”) is the national coordinating body for Canada’s 14 law societies. It operates the National Committee on Accreditation (“NCA”), a Standing Committee at the Federation whose primary mandate is to assess the legal education and professional experience of persons whose legal education and professional experience were obtained outside of Canadian common law jurisdictions and who wish to be admitted to a common law bar in Canada. It provides administrative support to the National Criminal Law Program and the National Family Law Program.
2. The Federation additionally engages in a number of national initiatives through various committees and other groups on which reports are received at its annual and semi-annual meetings.
3. More information about the Federation can be found on its website at www.flsc.ca/.
4. The Federation typically meets twice a year to conduct business meetings for Council members, benchers and law society staff. This includes a meeting of law society CEOs in the CEOs’ Forum and of law society presidents in the Presidents’ Forum.
5. Treasurer Paul Schabas, Federation Council member Ross Earnshaw, CEO Robert Lapper and Executive Director Diana Miles attended the Quebec City meetings held from March 12 to 14, 2017. This report provides highlights of the meetings.

COUNCIL MEETING

6. The Council met on March 12, 2017. It dealt with a number of decision items, received reports from the Federation’s President and its CEO and the Chair of CanLII Board of Directors, and addressed a range of Federation matters.

Reports for Discussion or Decision

Election to Fill a Vacancy on Council

7. As the Council member for Nova Scotia, René Gallant, tendered his resignation as a Director of the Federation effective March 14, 2017, based on the nomination of the Nova Scotia Barristers’ Society, Tilly Pillay QC was elected a Director of the Federation Council to replace Mr. Gallant for the unexpired term of Mr. Gallant.

Report on Strategic Planning

8. The Council considered the latest version of the draft Strategic Plan, which sets out revised Strategic Objectives based on discussions held at the December 13, 2016 Council meeting. It includes a variety of strategies related to each objective, as well as specific activities and performance measures in respect of each.
9. Council expressed its general support for the Strategic Plan and its direction, but agreed that any law societies that wished to provide further comments should do so by the middle of April 2017.
10. A revised document, together with a Federation Annual Activity Plan (including the proposed International Engagement Plan that was generally approved by Council) will be provided for formal approval by Council at its June 2017 meeting. The intention is to map the Strategic Plan to the Federation's Annual Activity Plan and 2017-2018 budget.

International Engagement Plan

11. Council reviewed a background report to inform its discussion of the Federation's International Engagement Plan for 2017-2018.
12. Derived from the Federation Vision Statement and Governance Policies, one of the Strategic Objectives in the draft Strategic Plan is the sharing of information on Law Society initiatives and national and international trends and issues, and within that, identifying, analyzing and reporting on national and international emerging issues, trends and developments of particular relevance to law societies.
13. The Federation's international activity is characterized primarily by maintaining its membership in a number of international organizations that bring together regulators and representative bodies of the legal profession from around the world, and by ensuring a Federation presence and participation at key meetings or conventions each year. The Federation's international presence has been comparable to other national legal organizations in that it has entailed a mix of elected/political and staff representation depending on the organization, forum or event in question. Practically speaking, this has meant attendance by the Federation President or his or her designate, and/or the CEO.
14. Reports on the Federation's international activity have been provided in various ways over the years. However, going forward, doing so in a manner that derives the most value for Canada's law societies will be key to advancing the Federation's strategic objective identified above.
15. Council reviewed the proposed Engagement Plan for 2017-2018. Some members of Council (including Ontario's representative) expressed reservations about whether all of

the elements are consistent with the Federation's role, and whether the investment of resources in some elements of the potential plan are of benefit to law societies. The view was that this would have to be much more clearly demonstrated over the coming year. As such, Council advised that it will expect to receive reports based on the activities in the Plan as they occur for the purpose of considering the benefit to the law societies going forward.

Report of the Finance and Audit Committee

16. Council received a report from the Federation's Finance and Audit Committee on second quarter financial statements for each of the Federation's General Fund and the National Committee on Accreditation for the period ended December 31, 2016, and budget plans for the 2017-2018 financial year. Law Society CEO Robert Lapper serves on the Committee.
17. The report included an amended budget timeline and approval process. The process would begin with a draft Budget circulated to the Council and law societies for their comments during the month of February and provided to Council at its March meeting. It would then be circulated to Council and the law societies for their final comments and submitted to Council for approval as recommended by the Committee, either by an electronic vote, if the Committee believes that there are no significant remaining contentious issues arising from its recommended Budget, or alternatively, if contentious issues appear to exist, to the Council meeting to be held in June.
18. In accordance with the process above, the Council and law societies were invited in February to provide their feedback on the draft Budgets for each of the General Fund and the NCA. In response to the invitation, helpful comments were received from Nova Scotia and Ontario, which were considered by the Committee in preparing its report to Council.

Standing Committee on the Model Code of Professional Conduct

19. The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to Council with respect to any changes to the Model Code. The Law Society's Naomi Bussin, Team Manager - Enforcement, Professional Regulation Division, serves on the Standing Committee.
20. Council approved the report from the Standing Committee that included proposed amendments to the rules relating to competence, dishonesty/fraud, incriminating physical evidence, and the responsibilities that arise when a lawyer leaves a law firm. These rule amendments will now be referred to law societies for consideration for adoption in their rules or codes of professional conduct.

Report of the TRC Calls to Action Advisory Committee

21. In its Calls to Action issued in 2015, the Truth and Reconciliation Commission (“TRC”) called upon the Federation “to ensure that lawyers receive appropriate cultural competency training” addressing the Indian Residential Schools legacy and key elements of Aboriginal law.¹
22. At its December 13, 2016 meeting, the Council approved a motion to establish a committee to be known as the Truth and Reconciliation Commission Calls to Action Advisory Committee. Its Terms of Reference set out its responsibilities, how the Committee’s membership should be composed and identify the required competencies for members of the Advisory Committee.
23. Council has now approved the membership of the Advisory Committee, as follows:
 - Karen Wilford, Co-chair, Council member representing Law Society of the NWT
 - Ghislain Picard, Co-Chair, Regional Chief for Quebec and Labrador
 - David Crossin, Past President of the Law Society of British Columbia
 - Dianne Corbiere, Bencher, Law Society of Upper Canada
 - Peggy Corbel Warolin, Member, Barreau du Quebec and former bâtonnière of the Barreau de Abitibi-Témiscamingue
 - Warolin Tuma Young, Member at Large, Council of the Nova Scotia Barristers’ Society.
 - Val Napoleon, Law Foundation Professor of Aboriginal Justice and Governance, University of Victoria
 - W. Brent Cotter, Professor, College of Law, University of Saskatchewan
 - Jean Teillet, Senior Counsel, Pape, Salter, Teillet
 - Stuart Wuttke, General Counsel, Assembly of First Nations
24. Following the Council meeting, based on a recommendation of the Executive Committee, Council agreed by electronic vote to add Paul Okalik, a member of the Law Society of Nunavut, as a member of the Advisory Committee.

June 2017 Council Meeting in Nunavut

25. At its December 13, 2016 meeting, Council agreed that its regular meeting in June 2017 would be held on June 21 in Iqaluit, Nunavut, the first of its kind held in Nunavut in the history of the Federation.

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

26. The Executive Committee reported to Council that in addition to the regular business to be transacted by the Council, the suggestion is that the Council use the opportunity to do the following:
 - a. learn about the operation of and the unique challenges faced by the Law Society of Nunavut;
 - b. meet representatives of the local Inuit population and the justice community to learn about northern justice issues; and
 - c. other possible engagement with local communities, with regard to logistics related to travel and accommodation.
27. Council agreed with this approach and that the above activities should be explored.

Update on the National Committee on Accreditation (NCA) Program Review

28. Council received a status report from Steve Raby, Q.C., Chair of the National Committee on Accreditation Program Review Advisory Group. The members of the Advisory Group are: Peter Wardle (Law Society of Upper Canada bencher), Tony Wilson (Bencher, Law Society of British Columbia), Diana Miles (Law Society of Upper Canada Executive Director of Professional Development and Competence) and Lorne Sossin (Dean, Osgoode Hall Law School).
29. By way of brief background, the Council determined at its March 2016 meeting that a comprehensive review of the NCA should be undertaken by independent experts covering the full range of issues relating to the NCA including its governance, the standard against which candidates are assessed, training and preparation of candidates and appropriate testing mechanisms, was appropriate.
30. In October 2016, a consultant was engaged and work was begun on seven substantive components:
 - a. identify and review the NCA's current goals, strategies and policies;
 - b. review the NCA's current procedures;
 - c. review the current training and preparation of applicants for NCA testing;
 - d. review the National Requirement and its impact on the NCA;
 - e. review success rates of NCA applicants;
 - f. review the NCA's governance, organizational structure and budget; and
 - g. identify relevant trends and best practices in peer jurisdictions.
31. The consultant has completed work on all of these components, including conducting in-depth interviews with Federation staff, Federation Council and Committee members, Canadian law school deans, and law society staff members. Surveys of NCA applicants, law societies and law schools have also been conducted.
32. The consultants are analyzing the information gathered. Draft conclusions and recommendations were discussed during a workshop in late February with members of

the Advisory Group, the NCA and Federation staff. The consultant's final report will be prepared and submitted to the Federation this spring.

Committee Appointments

33. Based on a recommendation of the Executive Committee, Council appointed Richard Scott, Q.C. as a member of the Public Affairs and Government Relations Committee to replace René Gallant, who has resigned. The Executive, having regard to regional balance on Federation Committees, recommended that Mr. Gallant be replaced by another Council member from the Atlantic region, Richard Scott, Q.C., the Council member nominated by the Law Society of New Brunswick
34. The Executive also recommended and Council agree to extend the terms of appointment of Morgan Cooper and Lorna Turnbull as members of the Canadian Common Law Program Approval Committee until November 2017.²

Information Reports

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

National Committee on Accreditation (NCA)

36. The NCA is a standing committee of the Federation, comprised of six appointed individuals representing the Council of Canadian Law Deans, the practising bar, and the law societies. The NCA helps Canada's law societies protect the public interest by assessing the legal education and professional experience of individuals who obtained their credentials outside of Canada or in a Canadian civil law program and by ensuring they meet the National Requirement. Law Society Bencher Malcolm Mercer is a member of the NCA.
37. The NCA has received over 1,000 applications for assessment to date in 2016-2017, approximately the same number of assessments at this point last year.
38. During the same period, 625 Certificates of Qualification have been issued. To date in 2016-2017, three exam sessions have been held during which almost 4,000 exams were written. Exams are offered in Canadian cities (includes Vancouver, Calgary, Edmonton,

² Pursuant to the terms of reference of the Canadian Common Law Program Approval Committee, members are appointed for staggered three year terms. The terms of appointment of Mr. Cooper and Ms. Turnbull were scheduled to expire as of January 2017. With all committee memberships now being reviewed in November of each year, it is desirable to delay consideration of any changes in committee composition until then, unless necessary to do so. Mr. Cooper and Ms. Turnbull have agreed to continue on the Approval Committee until November 2017.

Regina, Winnipeg, & Toronto) and sites abroad. In January examinations were written in 22 locations including seven outside Canada.

Canadian Common Law Program Approval Committee

39. Bencher Ross Earnshaw serves on the Canadian Common Law Program Approval Committee (the “Approval Committee”), which is mandated to assess Canadian common law programs to determine whether they comply with the National Requirement that graduates must meet for entry into the Canadian bar admission or licensing programs.
40. The Approval Committee meets in person or by conference call at least three times a year to evaluate law school reports and consider policy implementation. There are currently 20 law schools with approved programs, and one (Trinity Western University) with preliminary approval.
41. The University of Saskatchewan is starting a four year law program in September 2017 hosted at the Nunavut Arctic College. Two universities are considering opening law schools and the Approval Committee is prepared to evaluate these programs upon receipt of proposals to determine if preliminary approval for the programs should be granted.
42. The application of the National Requirement to joint, dual and one year programs for Canadian civil law graduates was deferred until 2017. However, feedback on all programs was provided to the law schools in both 2014 and 2015. Approvals for 52 joint programs (a law program combined with a non-law program), eight dual programs (two law programs from different institutions), and six one year programs for graduates of civil law programs were issued in December. The Federation website will be updated in the near future to include all approved programs.
43. The Approval Committee will meet next in June 2017 to review and evaluate the 2017 law school reports.

National Requirement Review Committee

44. The National Requirement Review Committee (NRCC) was established by the Council of the Federation to undertake two primary tasks: perform an initial review of the National Requirement that graduates of all Canadian common law programs must meet to be eligible to enter law society bar admission or licensing programs, and consider whether a non-discrimination provision should be added to the National Requirement and if so in what form.
45. Law Society Bencher Peter Wardle chairs the NRCC and Executive Director of Professional Development and Competence Diana Miles is a member.

46. The NRRC has met three times since its last status update, most recently on February 16, 2017. NRCC members have now completed the initial review of the National Requirement and were scheduled to issue a final report on this aspect of the NRRC's work by the end of March 2017.

Public Affairs and Government Relations Committee

47. Council of the Federation established this Committee to provide oversight of and guidance on policy and government relations issues. Law Society Bencher Will McDowell serves as a member of the Committee.
48. As requested by the motion adopted by Council in October 2016, the CEOs Forum has established the Anti-Money Laundering and Terrorist Financing Working Group ("Working Group") to review the model No Cash and Client Identification and Verification rules and consider issues related to their enforcement. The Working Group is co-chaired by Jim Varro, a Director at the Law Society of Upper Canada, and Frederica Wilson of the Federation. The Law Society's Anthony Gonsalves, a Team Manager in the Professional Regulation Division, is also a member of the Working Group.
49. The Working Group met in January and March, with additional meetings scheduled for April and May. It has identified the following key aspects to the work:
 - a. review of the content and substance of the Model Rules, including review of amended federal regulations;
 - b. survey of law societies to identify the methods used to assess compliance with the rules and approaches to their enforcement;
 - c. review and assessment of FATF mutual evaluation report;
 - d. identification of best practices for compliance and enforcement;
 - e. development of guidelines for compliance and enforcement, including education
50. The Working Group established three sub-committees to tackle different aspects of the work simultaneously. Work is underway to review the model rules, develop a survey to gather information on law society compliance and enforcement practices and to review the FATF report and other contextual documents to inform the Working Group's overall work.

Standing Committee on the Model Code of Professional Conduct

51. The mandate of this Committee was noted earlier in this report.
52. At the end of January 2017, the Standing Committee circulated a Consultation Package that includes proposed amendments to the rules on technological competence, the return to practice by former judges and the rule encouraging respect for the administration of justice. The deadline for submissions is May 30, 2017.

53. The Standing Committee will consider the feedback received, making further changes to the draft amendments as appropriate, and will prepare an Amendment Package to be sent out in September 2017. Those amendments are expected to be before Council for approval at its December 2017 meeting

Standing Committee on National Discipline Standards

54. The mandate of the Standing Committee is to facilitate implementation of the national standards established for law society handling of complaints and discipline matters (“National Discipline Standards”) and to make recommendations to Council for amendments to the National Discipline Standards from time to time as necessary. Law Society Executive Director of Professional Regulation Karen Manarin is a member of the Committee.
55. Work on a model rule in relation to Standard 16 was finalized. Challenges with the standards were discussed. The proposal for a Peer Support Project and several new standards in progress were also discussed. The new standards relate to:
- a. quality measures in complaint, investigation, prosecution and adjudication processes
 - b. a law society’s ability to take interim steps to protect the public before conviction or resolution of a matter
 - c. a process for early resolution of appropriate complaints
56. The revised Standards and Guide along with the new template for completion of the Law Society Annual Status Report for 2016 were provided to the law society contacts in January, 2017. As of mid-March, several law societies have completed the Report.
57. The Standing Committee continues its meeting schedule throughout 2017.

Law Societies Access to Legal Services Exchange / Participation in the Steering Committee of the Chief Justice of Canada’s National Action Committee on Access to Civil and Family Justice

58. Federation past President Jeff Hirsch continues to represent the Federation on the National Action Committee (“NAC”). The NAC hosted its annual meeting of representatives of provincial and territorial access to justice committees in March 2017 in Vancouver, B.C.
59. The Law Societies Access to Legal Services Exchange group held its first quarterly meeting on Wednesday February 22, 2017. Members have agreed to maintain an updated inventory of access to legal services initiatives of Canada’s law societies. The latest inventory was published on the intranet in both English and French in early March 2017.