



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

**TAB 5**

**Report to Convocation  
December 1, 2017**

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**Professional Development & Committee**

**Committee Members**

Peter Wardle (Chair)  
Jacqueline Horvat (Vice-Chair)  
Anne Vespry (Vice-Chair)  
Jack Braithwaite  
Christopher Bredt  
Dianne Corbiere  
Teresa Donnelly  
Howard Goldblatt  
Joseph Groia  
Michelle Haigh  
Barbara Murchie  
Sandra Nishikawa  
Andrew Spurgeon  
Catherine Strosberg  
Sidney Troister

**Purpose of Report: Decision**

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## **COMMITTEE PROCESS**

1. The Professional Development and Competence Committee considered the matter on November 9, 2017. Committee members Peter Wardle (Chair), Anne Vespry (Vice-Chair), Jacqueline Horvat (Vice-Chair), Andrew Spurgeon, Sandra Nishikawa, Michelle Haigh, Barbara Murchie, Christopher Bredt, Teresa Donnelly, Sidney Troister, and Howard Goldblatt attended in person. Committee members Joseph Groia and Catherine Strosberg attended by phone. Staff members in attendance were Diana Miles, Priya Bhatia, and Annette Diamond.

**FOR DECISION**

**AMENDMENTS TO THE NATIONAL REQUIREMENT**

**Motion**

- 2. That Convocation approve the amendments to the Federation of Law Societies of Canada National Requirement to**
  - a. remove “legal and fiduciary concepts in commercial relationships” from the list of private law principles that law school graduates are required to learn, and**
  - b. delete the word “presumptively” from the academic program requirement.**

**Summary of the Issue**

3. In 2010, the Law Societies approved the Federation of Law Societies of Canada National Requirement (“the National Requirement”), which came into force in 2015, specifying uniform competencies and skills that graduates of Canadian common law programs must have attained and the academic and learning resources that law school academic programs must have in place. (As the standard applies to common law programs only, the express approval of the Barreau du Québec and the Chambre des Notaires du Québec was not required.)
4. The Law Societies approved a recommendation that the National Requirement be reviewed no less frequently than every five years with the first review to be completed by 2018.
5. The National Requirement Review Committee (“NRRC”) was established by the Council of the Federation (“Council”) to conduct an initial review. In June 2017, the Council approved two amendments to the National Requirement proposed by “NRRC”.
6. Any amendments to the National Requirement must also be approved by the Law Societies before coming into effect.
7. The first amendment to the National Requirement removes “legal and fiduciary concepts in commercial relationships” from the list of private law principles that law school graduates are required to learn.
8. The second amendment clarifies the required course credits for academic programs.
9. A copy of the National Requirement showing the amendments is attached at [TAB 5.2](#).

10. The proposed amendments do not alter the essential elements of the National Requirement and they do not add to the requirements to be met by graduates of common law programs.
11. It is proposed by the Federation of Law Societies that the amendments come into force on January 1, 2018.

### **Key Considerations and Particulars of the Amendments**

12. The National Requirement represents an important national initiative relating to licensing and competencies. The National Requirement specifies the competencies and skills graduates must have attained, as well as the law school academic program and learning resources law schools must have in place. It applies to both new and existing law school programs and to internationally trained candidates whose qualifications are assessed by the National Committee on Accreditation.
13. The NRRC was established by the Council with a two-fold mandate: to consider whether the National Requirement should be amended to add a non-discrimination provision and to conduct an initial review of the National Requirement. Work on the first aspect of the mandate was suspended at the request of Council in October 2016.
14. The NRRC reviewed the National Requirement and issued a final report as an appendix to its Memorandum to the Council of the Federation, dated May 29, 2017, for the June Council meeting.
15. The NRRC proposed three recommendations, two of which call for amendments to the National Requirement. The third recommendation deals with clarifying and confirming the mandate of the Approval Committee (which does not require Law Societies' approval).
16. The two recommendations for amendments to the National Requirement, to come into effect January 1, 2018, are:
  - a. Deletion of "legal and fiduciary concepts in commercial relationships" from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirement, and
  - b. Removal of the word "presumptively," from paragraph 1.1 of section C. Academic Program so that the paragraph would read, "*The law school's academic program for the study of law consists of three full-time academic years or equivalent which is 90 course credits.*"

17. The first amendment to delete “legal and fiduciary concepts in commercial relationships” was recommended by the NRRC for the following reasons:
  - a. Unlike other components of the curriculum which are more generic in their description, this competency reflects a more specific content choice, opening a potential debate on why other areas of law have not been included.
  - b. The provision is poorly understood and law schools have struggled to ensure they are capturing it correctly in their course offerings.
  - c. The overall approach of the National Requirement focuses on competencies rather than specific course requirements.
18. The second amendment to delete the word “presumptively” from the academic program requirement is premised on the notion that “presumptive” suggests a different and lower number of course credits could apply in exceptional circumstances. The NRRC concluded that it is important to eliminate any ambiguity created by the term “presumptively”.
19. As part of its review process, the NRRC invited feedback from stakeholders, including the Law Societies, the Council of Canadian Law Deans, the Canadian Association of Law Teachers, and the Canadian Association for Legal Ethics, on the proposed recommendations. At the close of the consultation period on May 27, 2017, no feedback on the proposed amendments had been received from any of the stakeholders.
20. Because the amendments modify the National Requirement, Law Societies must approve the revisions. This is consistent with the process followed for approval of the National Requirement, which requires that any changes must be approved by Law Societies.
21. There are no budgetary implications for the Law Society in approving this motion.

## **National Requirement**

### **A. STATEMENT OF STANDARD**

#### **1. Definitions**

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

#### **2. General Standard**

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either;

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

### **B. COMPETENCY REQUIREMENTS**

#### **1. Skills Competencies**

The applicant must have demonstrated the following competencies:

##### **1.1 Problem-Solving**

In solving legal problems, the applicant must have demonstrated the ability to:

- a. identify relevant facts;
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- c. analyze the results of research;
- d. apply the law to the facts; and
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

##### **1.2 Legal Research**

The applicant must have demonstrated the ability to:

- a. identify legal issues;

- b. select sources and methods and conduct legal research relevant to Canadian law;
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- d. identify, interpret and apply results of research; and
- e. effectively communicate the results of research.

### **1.3 Oral and Written Legal Communication**

The applicant must have demonstrated the ability to:

- a. communicate clearly in the English or French language;
- b. identify the purpose of the proposed communication;
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- d. effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.

## **2. Ethics and Professionalism**

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes:

### **2.1 Knowledge of:**

- a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with:
  - 1. circumstances that give rise to ethical problems
  - 2. the fiduciary nature of the lawyer's relationship with the client;
  - 3. conflicts of interest;
  - 4. the administration of justice;
  - 5. duties relating to confidentiality, lawyer-client privilege and disclosure;
  - 6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and members of the public; and
  - 7. the importance and value of serving and promoting the public interest in the administration of justice.
- b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
- c. the range of legal responses to unethical conduct and professional incompetence; and
- d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.



## **2.2 Skills to:**

- a. identify and make informed and reasoned decisions about ethical problems in practice; and
- b. identify and engage in critical thinking about ethical issues in legal practice.

## **3. Substantive Legal Knowledge**

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

### **3.1 Foundations of Law**

The applicant must have an understanding of the foundations of law, including:

- a. principles of common law and equity;
- b. the process of statutory construction and analysis; and
- c. the administration of the law in Canada.

### **3.2 Public Law of Canada**

The applicant must have an understanding of the principles of public law in Canada, including:

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- b. Canadian criminal law; and
- c. the principles of Canadian administrative law.

### **3.3 Private Law Principles**

The applicant must demonstrate an understanding of the principles that apply to private relationships, including:

- a. contracts, torts and property law; ~~and~~
- ~~b. legal and fiduciary concepts in commercial relationships.~~

## **C. APPROVED CANADIAN LAW DEGREE**

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

## 1. Academic Program

- 1.1 The law school's academic program for the study of law consists of three full-time academic years or equivalent, which ~~presumptively~~, is 90 course credits.
- 1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
- 1.3 Holders of the degree have met the competency requirements.
- 1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.
- 1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of post-secondary education at a recognized university or CEGEP.

## 2. Learning Resources

- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.
- 2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.
- 2.3 The law school has adequate information and communication technology to support its academic program.
- 2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.