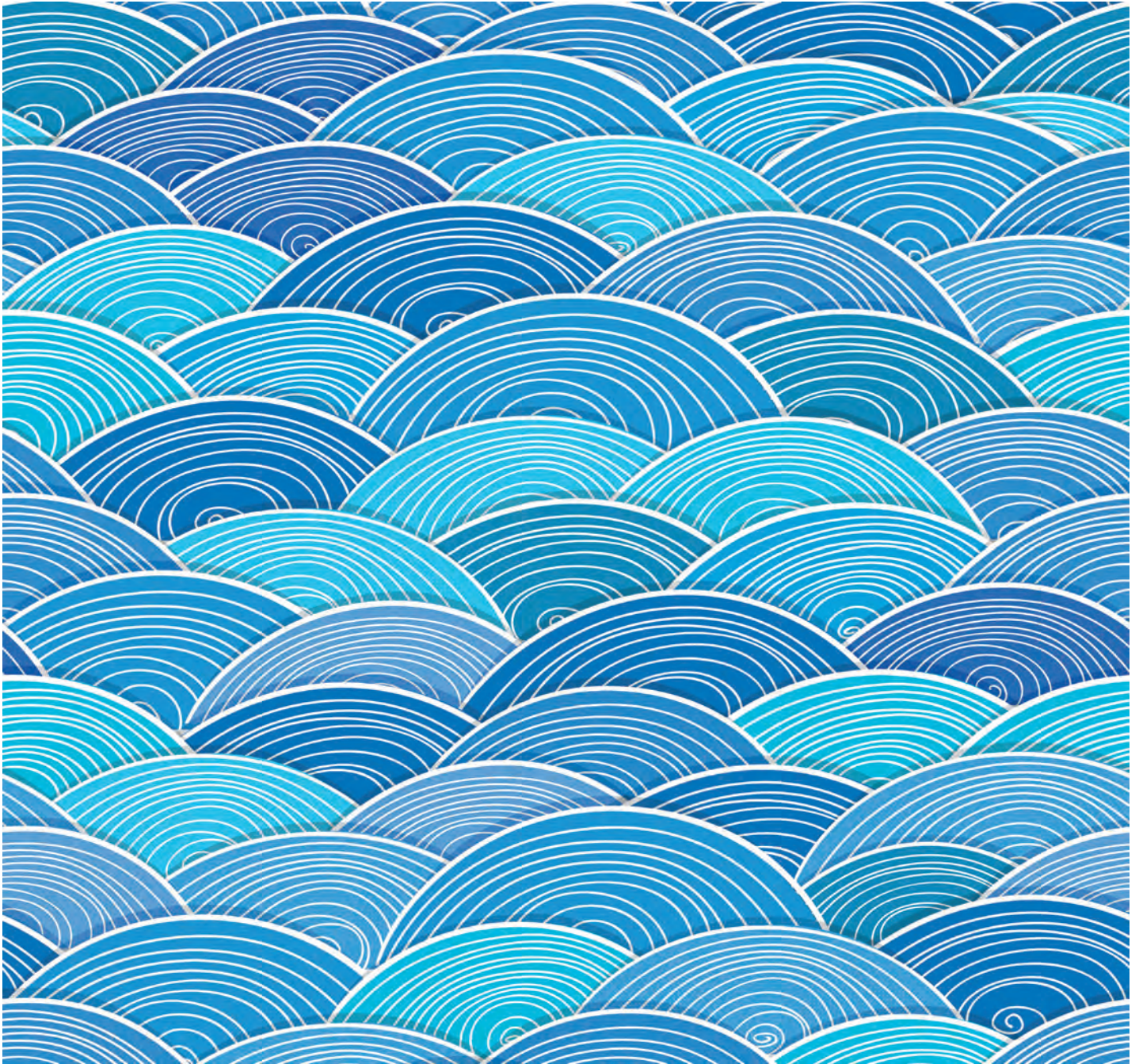


# LEGAL EDUCATION

Building a Better  
Continuum Together



Report from the  
2016 Annual Conference

Federation of Law Societies of Canada



## Conference Summary

Leaders from Canada's law society and law school communities met in St. Andrews by-the-Sea, New Brunswick in October 2016 to talk about legal education. The Conference, titled **Legal Education: Building a Better Continuum Together** was hosted by the Federation of Law Societies of Canada. It was planned in partnership with law societies and the legal academy.

The Conference provided an opportunity for participants to engage in a dynamic exchange on the key issues and challenges facing legal educators. The discussions helped attendees connect the dots among the bodies responsible for preparing legal professionals and amid the complexity of issues that converge along the legal education continuum. It also provided a space for participants to explore opportunities for greater communication and collaboration in preparing tomorrow's lawyers and Quebec notaries.

The Conference brought together the primary stakeholders in Canadian legal education, including members of the legal academy, deans from a number of law schools, law society elected leaders and senior staff, the Federation Council and key staff, and the heads of various national groups. The groups in attendance included the Council of Canadian Law Deans (CCLD), the Canadian Association of Law Teachers (CALT), the Association for Canadian Clinical Legal Education (ACCLE), the Canadian Association for Legal Ethics (CALE), the Canadian Association of Law Libraries (CALL), the Canadian Bar Association (CBA) and the Indigenous Bar Association (IBA).



**Paula Littlewood**

The Conference keynote presenter was Paula Littlewood, Executive Director of the Washington State Bar Association. As context for the discussion to follow, Ms. Littlewood spoke about the dramatic shifts taking place in the legal landscape. The acceleration of technology, the changing needs and nature of clients, the shifting lawyer demographic, emerging business models and a changing global context were among the factors cited as responsible for driving a sea change in the legal services market.

Ms. Littlewood reported that 50% of middle income consumers in the United States do not retain a lawyer when they have a legal problem; consumers are flocking to online self-help legal providers like LegalZoom and Avvo. Ms. Littlewood urged all actors within the legal industry, including the regulators and law schools, to innovate or risk being left behind.

Ms. Littlewood spoke of the need to break down the silos in legal education between law schools, the profession and continuing education, and to begin developing

different kinds of legal professionals to fill the legal services and skills gaps. She suggested that lawyers will need a diverse set of skills for success in the 21st Century, skills like leadership, technical fluency, an inclusive mindset, business acumen, problem solving, communications, and attention to personal well-being.

Ms. Littlewood also shared information about the Institute for the Advancement of the American Legal System's (IAALS) recent Foundations for Practice study based on a widespread survey of the American legal profession. The study identifies the skills and attributes ("foundations") entry-level lawyers need for

success. The top ten foundations needed right out of law school relate to professional competencies and personal characteristics and not legal skills. They include keeping confidentiality, arriving on time, honoring commitments, integrity and trustworthiness, treating others with courtesy and respect, listening attentively, responding promptly, diligence, a strong work ethic and attention to detail.

Against the forward-looking framework provided by Ms. Littlewood, conference presenters explored issues of importance to Canada's law schools and law societies, including the role of experiential learning in legal education, the Indigenization of legal education and the Truth and Reconciliation Commission Calls to Action. On the first day of the program participants were highly engaged in these presentations and the ensuing discussions, and in a provocative debate that sought to answer the question, "Are law schools and law societies ready for change?"

On the second day of the conference, participants worked in small groups to discuss key subjects in greater depth. Topics included responding to the TRC Calls to Action, competencies for the future, experiential and clinical education, and technology and the digitization of legal education. Attendees also discussed how law schools and law societies can foster an ongoing, collaborative relationship that recognizes their shared responsibility for legal education.

## Themes that Emerged from the Discussions

Seven key themes emerged through the group's collective reflections on legal education: legal education as a continuum; communication, relationship building and reconciliation; coordination and collaboration; autonomy; diversity; innovation and access to justice.

### ***Legal Education as a Continuum***

An underlying theme that resonated over the two days is that our tendency to view legal education in discrete silos, comprising the law school, law society and CPD phases, is problematic. Some participants remarked that this paradigm keeps each group inward looking, and discourages holistic communication and coordination of efforts in responding to common challenges. A silo-centric approach also reinforces stereotypes, misunderstandings and misconceptions about those outside one's group.

The debate between leaders in the law school and law society community emphasized this point. It highlighted some of the ways in which each group views the other. Although the stereotypes were deliberately exaggerated to drive home the message, participants no doubt recognized some of their own biases and misconceptions in the entertaining scenarios that were dramatized. Breaking down the silos helps to break down the barriers to communication and understanding. It makes coordination and collaboration, when appropriate, possible. This has the potential to render better solutions informed by a wider pool of knowledge and experience.

Re-conceiving law school, bar admission processes and post-call training as a continuum is consistent with the reality that all phases of legal education are inter-related. They constitute a spectrum of formal and informal stages of learning. It was noted that learning along the continuum is fluid and dynamic. For instance, in discussing the role of experiential learning in legal education and where it should occur on the learning spectrum, a number of participants commented that it should (and does) occur at various points along the continuum – at law school, in professional training programs, during articling, in CPD programs and in practice. As Professor Shauna Van Praagh put it, the silos might be thought of as "permeable autonomous spheres".

### ***Communication, Relationship Building and Reconciliation***

Consistent with the notion that law schools and law societies cannot thrive as two silos was the view that we can't do things without talking to one another. Open lines of communication between law societies, law schools, Indigenous groups and other partners in legal education is critical to building understanding and the capacity to meet the challenges on our doorstep. Effective communication needs a conduit and there was much talk about the importance of building bridges among stakeholders and between individuals as a foundation for understanding one another and working together.

There are already several channels through which law schools and law societies meet on issues relating to legal education. Members of law faculties sit on various Federation committees including the Canadian Common Law Program Approval Committee, the National Requirement Review Committee, and the National Committee on Accreditation. Law school faculty and members of the Indigenous community also sit on the Federation's Truth and Reconciliation Commission Calls to Action Advisory Committee. Also, a number of deans have a seat on law society boards and committees.

A well-established network on legal ethics exists among members of the academy, law societies and the Federation. Information is shared via an active listserv community comprising users from all groups. The academy is consulted on the ongoing amendments to the Federation's Model Code of Professional Conduct. Further, the Federation contributes to the programming of the annual CALE conference and partners with the CBA and CALE in the organization of the annual CBA/FLSC Legal Ethics Forum. The partnerships in the area of legal ethics are an example of the types of linkages that could work in other areas where the responsibilities and interests of law schools, law societies and other groups converge.

Communication and fostering relationships featured prominently in the panel presentation and workshop discussions on the Indigenization of Legal Education, the TRC Calls to Action and the process of reconciliation.

Attendees heard that we can't assume that one group's understanding of "having a dialogue" means the equivalent within an Indigenous context. There needs to be shared standards about language, and a shared literacy about what is meant by "culture", and what we mean when we speak of "cultural competency". This requires much dialogue and a genuine desire to understand the other.

Dean Angelique Eaglewoman spoke about the primary competencies for students at Lakehead University's Faculty of Law, which include protocols for working in communities, understanding cultural gatherings, the significance of relationships, and intercultural interactions, among others. All of these competencies point to the primacy of communications and relationships.



***Dean Angelique Eaglewoman***



*Koren Lightning-Earle*

Koren Lightning-Earle, President of the IBA, spoke of the importance of relationship building to the process of reconciliation. Her main message was that to develop cultural competency and standards of reconciliation there has to be a willingness to make meaningful space for Indigenous law. This requires clear and ongoing communication between Indigenous and non-Indigenous groups and the development of truly authentic relationships. She noted that the IBA is presently focused on building partnerships and relationships to achieve reconciliation. In particular, the IBA has worked with the Law Society of Upper Canada, the Canadian Human Rights Commission and the Federal Court.

We also heard about the need for authenticity and listening without a fixed agenda. Participants talked about the need to balance setting goals and defining outcomes of dialogue against the value of listening and learning from one another for the sake of building understanding and trust. In his opening remarks, Kanattio of the Passamaquoddy People, on whose lands the meeting was held, reminded attendees that we need to take the time to learn from Indigenous Peoples in an unhurried way.

As work on the TRC Calls to Action continues, building bridges with Indigenous communities and the larger legal community will be integral to the process of developing meaningful responses to the TRC recommendations. We heard during the conference that a number of law societies and law schools have taken steps to establish relationships with Indigenous communities for the purpose of seeking input and forming partnerships to assist them in responding to the Calls to Action.

In some jurisdictions, there are strong connections and long-standing relationships between the law school(s) and the law society. In certain jurisdictions, the network also includes Indigenous groups. There is in place a means for sharing information and thinking collectively about common issues. However, this is not true in all jurisdictions with a law school.

Building relationships also contemplates repairing relationships that have been damaged in the past. As Kanattio reminded participants at the outset of the program, for Indigenous people, past dealings with lawyers have not always been positive, and lawyers must tread lightly when going into Indigenous communities and speaking with Indigenous people.

The message we heard was that relationship building and re-building can be slow and messy, but cannot be overlooked if we want to achieve genuine reconciliation with Indigenous Peoples and lasting partnerships among stakeholders in legal education. A central goal of the conference was to begin a dialogue that would continue among the primary stakeholders long after the meeting ended. Further opportunities for both formal and informal dialogue were discussed during the day two workshop, as explored later in this summary. Participants agreed that there is room for additional forums for the ongoing exchange of information and ideas on legal education.

### ***Coordination and Collaboration***

The need to seek opportunities for coordination and collaboration emerged throughout the conference presentations and workshops in a variety of contexts. We heard that we are in this together and that we are better together. We heard that collaboration means sharing of information and best practices. It means complementarity instead of competition.

During the debrief of the workshop on clinical and experiential education, it was observed that clinical programs and simulations in both law school and bar programs offered an opportunity for modeling appropriate behaviours and for assessment of those behaviours, with some competencies being best suited to one environment over another. It was also observed that some competencies might benefit from a collaborative effort. Focused clinics on legal technology and innovations in the design of legal services, and on business issues, were cited as examples of potential collaborative projects between law schools and law societies. Similarly, in the discussion on the future of libraries and the digitization of legal education, it was remarked that there is a role to be played by both law schools and law societies, and that more discussion and coordination of efforts is needed.

Collaboration was also seen as important within our respective domains. For example, it was suggested that the way a course is taught in law school can demonstrate soft skills, and there may be an opportunity for shared learning between adjunct professors and tenured professors.

Further possibilities for collaboration and coordination are discussed later in the summary in the section entitled "Opportunities for Building Legal Education Together" (Page 8)



### ***Autonomy***

Another theme expressed during the conference was that while there are common interests and concerns among stakeholders on the legal education continuum, there remains a crucial autonomy. This autonomy is bolstered by robust and rigorous oversight both through the governance and jurisdiction delegated by statute to the law societies and to University-based law schools. That each group respect the autonomous governance and decision-making of the other was an important value echoed throughout the discussions.

Attendees observed that although law schools and law societies have interrelated functions, their roles and responsibilities are fundamentally different. For instance, law societies alone are responsible for the regulation of the profession in the public interest. The view was expressed that law schools and law societies are different types of public institutions yet fundamentally, both work to serve people and share a commitment to learning. Both law societies and law schools also play vital gatekeeping roles through the admissions and licensing process. In some cases, these roles are expressly linked (for example, an NCA candidate's assessment may require him or her to complete studies at a Canadian law school.) There is a rich diversity among the "permeable autonomous spheres". The view that it is important to have open conversations about the differences, and to see them as a source of strength, was also shared.

## ***Diversity***

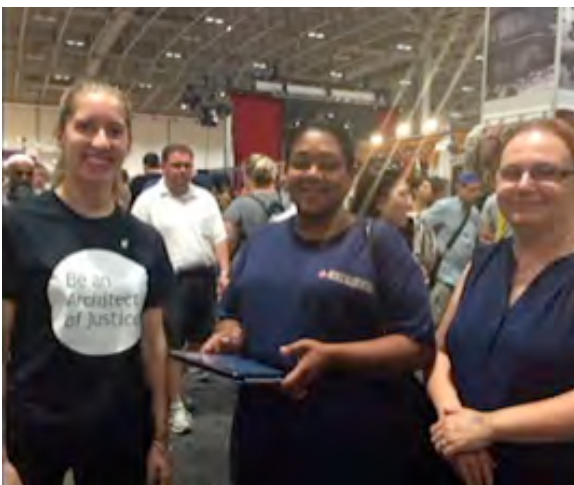
The need for autonomy is interwoven with the notion of diversity: diversity among stakeholders and diversity in understanding and approaches to curriculum, teaching and in responding to challenges ahead. Attendees also spoke about diversity as it relates to inclusion and equality.

The group discussions touched on efforts by law societies and law schools to integrate values and principles of diversity into their programs and policies, and efforts to promote and support environments that reflect a commitment to diversity, equity, fairness and respect. Over the two days of meetings, participants heard about the many ways we can deepen our learning about the interaction of Canadian law and Indigenous legal orders. Diversity featured prominently in the discussions on the TRC Calls to Action, as evinced by the varied responses of law schools and law societies to date.

We also learned about the diverse ways in which students at all stages of learning can experience clinical education, combining critical understanding with opportunities to apply their skills in practice-like settings. There is also a great diversity in the skill sets students possess when they enter law school or the professional stage of their training. For instance, some law schools have skills training embedded in clinical offerings, but these are not mandatory and not all students will benefit from them. Other students may be exposed to more skills development, whether through their education or work related experience, or may see important skills modelled in the classroom. The view was expressed that flexibility is necessary to accommodate the different paths that students have walked, rendering coordination among law schools and law societies critical.

## ***Innovation***

With the legal landscape in a state of flux and the topography of the future uncertain, law schools and law societies have developed creative responses to the myriad challenges they face. Law schools and law societies were invited to each submit a short video highlighting an initiative aimed at preparing graduates and lawyers. Twelve videos were received showcasing innovations in curriculum design, teaching, clinical education, access to justice, support for lawyers in practice, and innovations on the frontiers of substantive law, including the recovery of Indigenous Law. The videos represented some of the many novel initiatives and approaches happening at both law schools and law societies. Links to the videos played at the Conference are available on the Federation Intranet.



***From the video provided by the Law Society of Upper Canada's Action Group on Access to Justice (TAG)***

The Law Society of Upper Canada's Action Group on Access to Justice (TAG) was featured in one video. TAG is an access to justice initiative that is fueling solutions to Ontario's access to justice challenges by facilitating collaboration with institutional, political and community stakeholders.

Dalhousie University's Schulich School of Law's video showcased leading edge conferences, including the first National Food Law and Policy Conference in Canada and the first Conference on End of Life Law, Policy, Ethics and Practice. Both conferences were multidisciplinary and multisectoral. The End of Life Conference was also multinational. As one professor in the video explained, conferences like these are good for legal education because they help faculty to think critically at a disciplinary, cross-disciplinary, and interdisciplinary level.

Attendees heard in another video about the Indigenous Law Research Unit at the University of Victoria's Faculty of Law, which is committed to the recovery and renaissance of Indigenous laws. Faculty and students discussed what it means to speak about Indigenous law and where Indigenous law comes from. Attendees also heard reflections on the process of supporting the work of Indigenous Peoples and communities in articulating their own legal principles and processes.

In 2016, the University of Alberta converted its compulsory Foundations of Law Course into a two week intensive course taken by all students at the beginning of the first year. In addition to an introduction to the law, the Canadian legal system and basic legal principles, the curriculum was expanded to include a concentrated unit on sexual assault, and an examination of Aboriginal and Indigenous legal traditions in Canada.

Through the video, conference attendees also heard from students who took part in the Kairos blanket exercise that was part of the Foundations of Law Course. This powerful exercise walks participants through hundreds of years of Indigenous and Canadian history and highlights the impact of law, legislation, and policy on the lives of Indigenous Peoples in Canada.

Two projects at the Barreau du Quebec were highlighted, a project on rethinking the hourly billing method to meet the needs of a changing public, and the Bar School's Web-pro école pilot project. Through Web-pro école, students (and practising lawyers) can take classes through a virtual portal.

The Law Society of Alberta's Responsible Lawyer Office Visit Program was also showcased. The program supports lawyers in their practice. A law society staff person visits the lawyer's office and offers necessary advice and support on practicing responsibly and complying with the Code of Professional Conduct. The program has been very well received by Alberta lawyers.

Osgoode Professional Development Program's new Online NCA Exam Prep Program was featured in a video. The program offers instruction in the National Committee on Accreditation's five mandatory exam subjects: Foundations of Canadian Law, Canadian Constitutional Law, Canadian Administrative Law, Canadian Criminal Law and Professional Responsibility. Those enrolled in the program receive video instruction from Osgoode Hall Law School professors, can access online resources, and are able to interface with fellow NCA candidates and the instructors online.

During the conference deliberations on the competencies new lawyers need for practice, a number of attendees pointed to the need for a greater focus on soft skills (e.g. emotional intelligence, leadership, teamwork, resilience), professionalism, and practice management (e.g. time management, communication, stress management, business skills). This discussion of competencies raised the



*From the video "Indigenous Law: Tough Questions" by the Indigenous Law Research Unit at the University of Victoria's Faculty of Law.*



*From the University of Alberta video showing the Kairos blanket exercise, part of the Foundations of Law Course of the Law Faculty.*



importance of framing standards not just around how legal practice is undertaken today but also how it is evolving. Competencies, in other words, should not be a snapshot of where the puck is but rather pathways to prepare law graduates for where the puck is going. Participants generally agreed that it would be worthwhile to revisit the competencies in the National Competency Profile and National Requirement, but also said that flexibility is needed in how the competencies are applied.

### ***Access to Justice***

It was evident from the deliberations that access to justice is top of mind for law societies, law schools, Indigenous communities, and all groups represented at the conference. A discussion about legal education in Canada would be meaningless without acknowledging and turning our attention to the profound justice gap that exists in our legal system today.

Access to justice was the prism through which most Conference topics were discussed. The TRC Calls to Action, the Indigenization of legal education, the evolution of bricks and mortar libraries, experiential learning, and the need for law students and new lawyers to possess the critical competencies - knowledge, skills and values - for practice today, are directly connected to the need to ensure access to legal services and access to justice for Canadians.

## Opportunities for Building Legal Education Together

Conference participants were asked to discuss opportunities for dialogue and collaboration, the processes and infrastructure that would be required to support dialogue and collaboration, and any obstacles to ongoing dialogue and collaboration.

One consistent theme was the need for ongoing opportunities for cross-pollination of ideas between law schools and law societies, both formal and informal. It was noted that this should occur at the local and national levels and should include a broad range of Indigenous voices in both the design process and the dialogue itself. A national network was seen as particularly important for jurisdictions that do not have a law school and for which access to justice may be a greater concern.

At the national level, for instance, the Federation, the CCLD, ACCLE, CALT and the Quebec Association of Law Teachers (PDQ) might meet regularly or formalize processes for sharing information. It was suggested that existing channels of law school-law society communication, e.g., the Canadian Common Law Program Approval Committee, could play a key role in promoting a dialogue between the academy and the Federation nationally.

Law societies were challenged to take a leadership role in building bridges by ensuring that members of the academy sit on their boards and/or on key education-related committees, where they do not already do so. Similarly, law schools might invite law society leaders to sit on law faculty Council or other bodies within the university, and to give adjunct faculty input into curriculum design.

In addition to the formal bridges, opportunities for informal connections were discussed, including working groups focused on concrete issues, webinars or teleconferences, and a portal for sharing resources and best practices. Further suggestions include attending each others' conferences, the development of new Conferences (e.g., an annual forum on legal education) and the possibility of a permanent Standing Committee. There is a need to carefully consider the additional stakeholders that should be included in any future event or meeting, for instance law students, CPD providers and other organizations with an interest in legal education. Meeting face to face was seen as important, but not

the only option. It was suggested that a toolkit of options is needed to accommodate the diversity across the country.

A number of obstacles to moving forward were identified including assumptions about each other, stereotypes, mistrust and fear of erosion of autonomy. Communication and fostering dialogue were seen as key for overcoming these obstacles. Open discussion among law schools, law societies and Indigenous communities was perceived as an important first step to figuring out how to face the challenges ahead and to ensure that we evolve.

## Conclusion

The Conference was an opportunity to step back and think about legal education in the context of the changes that are shaping the future of legal services and, as a result, the systems of legal education that will prepare the lawyers and Quebec notaries of tomorrow. Presenting a wide lens on legal education allowed participants to step outside their silos and take stock of how the pieces of the legal education puzzle fit together. Participants identified synergies, areas of commonality and domains of distinctiveness among the groups. The trend toward a holistic approach to legal education is reflected in the 2017 ACCLE and CALT Conference, the theme of which is "The whole lawyer and the legal education continuum". The notion of a continuum is also evident in the Law Society of Upper Canada's "Dialogue on Licensing", which focuses on having a discussion about the continuum of lawyer training and competence development, and how the lawyer licensing process fits into that continuum.

The Conference established that there is value in getting together to exchange information, perspectives and ideas. The dialogue on legal education allowed us to better understand each stakeholder's role and environmental challenges. There was a consensus among the group that we should build on this discussion and seize opportunities for ongoing dialogue.

This summary captures some of the conversation and themes that were touched on, in addition to ideas for ongoing discussion. It is not intended to be a comprehensive record of every deliberation but rather a starting point for further consideration, discussion and analysis of the issues and possibilities before us as legal educators.

The summary includes a number of ideas to ensure that law schools and law societies continue talking to one another. All stakeholders are encouraged to take proactive steps to seize opportunities for engagement and further dialogue on legal education is envisioned.