

National Admission Standards Project



Phase 1 Report

September, 2012



Background

1. In October 2009 Council of the Federation approved a plan for a project to develop national standards for admission to the legal profession in Canada. Consistency in admission standards and candidate assessment were identified as key goals of the project.
2. The decision to embark upon a project to develop national standards for admission to the legal profession reflected an important strategic priority identified by Council and law society CEOs and ultimately incorporated into the Federation's strategic plan:

To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

3. Probably the most compelling argument for consistent admission standards flows from the mobility of members of the legal profession in Canada. Since the signing of the National Mobility Agreement ("NMA") almost a decade ago, lawyers in Canada have been able to move with relative ease between jurisdictions. The Territorial Mobility Agreement and the Quebec Mobility Agreement ("QMA") brought the three northern jurisdictions and Quebec into the mobility regime. The recent addendum to the QMA extended mobility rights to Quebec notaries. Amendments to the labour mobility provisions of the Federal-Provincial-Territorial Agreement on Internal Trade ("AIT") have fundamentally altered the mobility landscape by rendering mutual recognition of professional licences mandatory.
4. Through the law societies' own rules and the recent legislative amendments to give effect to the changes to the AIT, admission to one law society effectively guarantees admission to all others (albeit on a restricted basis for members of the profession moving to or from Quebec). Although one of the underlying premises of the NMA was that the standards for admission in all Canadian jurisdictions were reasonably comparable, the reality is that there are some significant differences both in the standards and processes employed by each law society. The mobility of members of the profession between jurisdictions not only makes such differences difficult to justify, it makes them undesirable. In deciding to undertake the development of national admission standards Council recognized that common standards would provide each jurisdiction with the assurance that all legal professionals practising in their jurisdiction have met the same standards of competence regardless of where they are first licensed.
5. The implementation of fair access to regulated professions legislation in Manitoba, Ontario and Nova Scotia presented another reason for standardizing the criteria used to assess candidates for admission to the bar. Council recognized that with admissions standards and processes under scrutiny in these jurisdictions the existence of significant differences would be difficult to justify.

6. The project plan approved by Council recognized that consistency in admission standards should start with agreement on the criteria that applicants must meet. To that end two goals were identified for the first phase of the project: the drafting of a profile of the competencies (“Competency Profile”) required upon entry to the profession and the drafting of a standard for ensuring that applicants meet the requirement to be of good character (“National Fitness and Suitability Standard”). As described later in this report, we anticipate that additional admission standards addressing training and assessment will be developed as these first standards are implemented.

7. The engagement of law society staff and volunteer leaders was identified as vital from the outset of the project. A great deal of expertise in the design and implementation of admissions policies and programs resides in the law societies; the project was designed to take advantage of this resource and to ensure the involvement of representatives from across the country. The project is overseen by a Steering Committee comprised of law society CEOs and volunteers – Don Thompson, Chair (Law Society of Alberta (“LSA”)), Tim McGee (Law Society of British Columbia (“LSBC”)), Alan Treleaven (LSBC), Michael Milani (Law Society of Saskatchewan (“LSS”)), Allan Fineblit (Law Society of Manitoba (“LSM”)), Robert Lapper (Law Society of Upper Canada (“LSUC”)), Laurie Pawlitza (LSUC) (replacing Tom Conway), Lise Tremblay (Barreau du Québec (“Barreau”)), Darrel Pink (Nova Scotia Barristers Society (“NSBS”)), and Jonathan Herman, Federation CEO. President John Hunter has also been participating in the Steering Committee. Federation Senior Director Regulatory and Public Affairs, Frederica Wilson, is the project manager and additional support is provided by Daphne Keevil Harrold, Federation Policy Counsel.

8. Senior admissions staff members from five law societies – Lynn Burns (LSBC), Brenda Silver (LSM), Diana Miles (LSUC), Lise Tremblay (Barreau) and Frank O’Brien (Law Society of Newfoundland and Labrador (“LSNL”)) - have played an important role in the project as members of the Technical Advisory Committee (“TAC”), providing invaluable input and practical guidance in the development of the Competency Profile. The TAC has also acted in an advisory capacity to the project Steering Committee. The law societies also participated actively in identifying and recruiting practitioners to work on the drafting of the profile as members of the Competency Development Task Force (“CDTF”) and to act as independent reviewers of an initial draft.

9. Both credentialing and policy staff from several jurisdictions have also been involved in the work on the good character standard – Michael Lucas and Lesley Small (LSBC), Michael Penny and Angela Gallo-Dewar (LSA), Richard Porcher (LSM), Sophia Sperdakos and Naomi Bussin (LSUC) and Jackie Mullenger (NSBS).

Competency Profile

10. The identification of the essential competencies required upon entry to the legal profession is an important element in admission standards that are both fair and transparent. To assist in the drafting of the profile and in particular to ensure that the Competency Profile was developed in accordance with best practices we engaged Professional Examination Service (“PES”), a non-profit organization dedicated to excellence in credentialing. A profile of PES is attached as Appendix “A” to this report. Two consultants from PES have guided the work on the Competency Profile throughout this phase of the project.

11. Competency profiles setting out what applicants must know and be able to do already exist in Ontario, Quebec, the four western provinces and Nova Scotia. With the assistance of our consultants, members of the TAC worked with these existing profiles to create an outline of the competencies profile. This outline provided the basic structure of the profile, organizing the competencies into substantive knowledge, skills and tasks categories.

12. Working with the outline and structure provided by the TAC, the members of the CDTF, 11 practitioners in their first 10-years of practise from every region in the country, then fleshed out the profile. In the course of a two-day meeting in Ottawa, the CDTF drafted a profile intended to reflect the tasks actually performed and the knowledge and skills actually required of general practitioners at the time of admission to the profession. Thirty practitioners identified and recruited with the assistance of the law societies, reviewed and provided comments on the draft, which was then revised by the members of the CDTF during another in-person meeting.

13. As the Competency Profile is intended to be truly national in scope, applicable to both common law and civil law applicants, the draft profile was next reviewed by a small working group of representatives of the Barreau du Québec and the Chambre des notaires du Québec to ensure that it was reflective of the nature of legal practice in Quebec.

14. Consistent with accepted practices in developing such profiles, the revised draft profile was then validated through a survey of entry-level lawyers and Quebec notaries designed by PES with advice and input from the TAC. Almost 7,000 members of the profession called to the bar within the past 5 years were invited to participate in the survey. Respondents were asked to rate each individual competency on two scales: how frequently they performed or used the competency; and, the severity of consequences if an entry-level practitioner in their practice setting did not possess or was unable to perform the competency. Respondents also provided information on their practice areas and settings (private practice, public sector, solo practitioner, urban, rural, suburban etc.) and year of call to the bar. Of those invited to take the survey, 1187, or 17.2% did so, a rate consistent with return rates for other surveys of the profession. PES has advised that the rate is sufficient to provide statistically reliable data.

15. The task of reviewing the survey results to determine whether the individual competencies had been validated fell initially to the members of the TAC. To facilitate this review, PES broke the data down by jurisdiction, practice setting, location, and year of call. Determining whether an individual competency was validated involved analyzing the data to assess whether the competency was used or performed with sufficient frequency (once a month or less on average) in a sufficient number of jurisdictions and practice settings, and whether the respondents in a sufficient number of jurisdictions and practice settings deemed the consequences of failing to have or be able to perform the competency to be at least minimally serious.

16. The members of the TAC recommended that all competencies definitively validated using these criteria be included in the Competency Profile and that all of those clearly not validated be deleted. Applying the frequency and severity criteria a number of competencies were of indeterminate status, that is they met the threshold for severity of consequences, but not for frequency. Members of the TAC, under the guidance of our consultants, applied their judgment and subject-matter expertise to the empirical data to make recommendations to the Steering Committee on the inclusion or exclusion of each questionable competency. These recommendations and the supporting data were subsequently reviewed by the members of the Steering Committee. The final Competency Profile is attached as Appendix "B". A summary of the survey data is attached as Appendix "C".

17. The final Competency Profile is largely consistent with those profiles currently in use in various jurisdictions. It is divided into three sections: knowledge, skills and tasks. As with existing profiles, the majority of the competencies in the proposed profile relate to skills and the performance of specific tasks. The section on knowledge includes competencies related to the Canadian legal system, Canadian substantive law, procedural knowledge and knowledge of ethics, professionalism and professional responsibility. The profile does contain some substantive knowledge competencies not included in the national requirements for Canadian common law degree programs: the law of evidence, family law and the law of wills and estates all met the frequency and severity of consequences thresholds and so have been included in the profile. In considering the implementation of the profile one issue that will have to be addressed is where in the process leading to admission – law school, practical training, bar admission programs – each of the competencies would be acquired. In that process particular regard will have to be paid to the knowledge competencies not now included in the common law degree requirements. This may involve discussion with all of the relevant stakeholders, including representatives of the law schools.

18. A number of tasks included in the draft profile were not validated through the survey and the members of the TAC recommended they be deleted. In most cases these tasks were not validated in any jurisdiction. There were, however, a number of tasks that were validated by the Quebec notaries who responded to the survey, but were not otherwise validated. The tasks, which include such things as conducting a basic real estate transaction, drafting a basic will and drafting a power of attorney, are at the core of notarial practice in Quebec. The unique nature of notarial practice explains this disparity in the validation data. Given their importance to notarial practice in Quebec, all of these tasks have been left in the profile, but only for those candidates seeking admission to the *Chambre des notaires*.

19. The Steering Committee recommends that the Competency Profile attached as Appendix “B” be approved by Council as a national admission standard to be submitted to member law societies for their approval on the understanding that the approval is subject to the development and adoption of a plan for implementation. The process for considering implementation of the standard is discussed below.

Good Character Standard

20. Applicants for admission to the profession across Canada are required to be of “good character”, yet there is no agreed upon statement of exactly what an applicant must demonstrate to meet the requirement. Critics have argued that the standard is vague, difficult to define and apply, and creates uncertainty for applicants as a result. The drafting of a common good character standard is intended to remedy this by ensuring that the required elements of good character are clearly articulated and defensible.

21. A group of law society policy and credentialing counsel has been working to articulate the rationale for and the elements of the standard. The Working Group has also been asked to address the issue of fitness. Recognizing the importance of not confusing the two concepts (i.e. issues of medical fitness have nothing to do with an applicant’s character) the Working Group has concentrated first on good character. It anticipates beginning work on fitness in the fall.

22. Attached to this report as Appendix “D” is a draft framework for a *National Fitness and Suitability to Practise Standard* (“Draft Framework”). The use of “suitability” instead of “good character” reflects the concern over the ability to accurately define “character.” The Working Group is recommending that regulators move away from the notion of “character”, articulating in its place specific attributes, such as honesty, integrity and candour that members of the profession must possess and which together speak to the candidate’s suitability to practise law.

23. The Draft Framework opens with a statement of the principles that are relevant to assessing whether an applicant is suitable for the practice of law. The common mandate of the regulators to take reasonable measures to protect the public, set high ethical standards, and maintain public confidence in the profession are cited together with the essential expectations that the public has that members of the profession will act with honesty and integrity.

24. The over-arching principles are followed by a discussion of the factors relevant to an assessment of suitability. The Draft Framework identifies four key factors – respect for the rule of law and the administration of justice, honesty, governability and financial responsibility. The rationale for each is discussed and general guidance on the application of the factors is also included. The Draft Framework concludes with a discussion of the tools that can be used to gather information on suitability and guidance for investigations and hearings. A proposed standard questionnaire for use as an initial screening tool is attached to the Draft Framework as Appendix “1”.

25. The Draft Framework is still a work in progress. In addition to addressing issues of fitness to practise, members of the working group have identified a need to add guidance on investigations and hearings. The Working Group has begun this work and expects to complete the draft in the late fall. The Draft Framework is being presented at this time for your information and will be circulated for consultation once it is complete.

Implementation of National Admission Standards

26. One of the primary motivations for Council's decision to undertake a project to develop national admission standards was the desire for consistency in admissions policies and procedures.

27. The project plan approved by Council contained the following statement of the goal of the project:

To develop consistent, defensible standards for admission to the legal profession and to ensure every applicant admitted to the bar meets these standards.

28. The mobility of members of the profession, particularly with the introduction of mandatory mutual recognition of credentials under the AIT, argues for a high degree of consistency in the standards applicants must meet for admission. Only by having consistent standards can each law society be assured that all members of the profession practising or licensed in their jurisdiction have demonstrated the same basic competence and suitability.

29. Approval of the national Competency Profile and a national fitness and suitability standard will be the first steps in achieving consistency. How the standards will be implemented, including the critical questions of what teaching and training will be provided and how candidates will be assessed to ensure they meet the standards, remain to be considered. This is the work of Phase II of the project.

30. Implementation of national admission standards may take many forms. Training may be developed and administered locally, nationally or through a combination of the two. Assessment may take the form of national, regional or local examinations or skills assessments, or some combination. The goal of consistency is unlikely to be met unless we agree to common assessment mechanisms, but the implementation of a common assessment mechanism may make possible the use of different teaching and training methods in different jurisdictions while achieving consistency in the outcome.

31. The existing admission processes in Canadian law societies share a number of essential features: all require that applicants have a law degree (a civil law degree in Quebec and a common law degree in the rest of the country); all require that applicants complete an articling or similar requirement; and all require applicants to successfully complete some form of assessment. But there are also many differences, perhaps the most significant of which relate to how and on what applicants are assessed; some law societies assess both skills and knowledge of substantive and procedural law, some test knowledge only, some use practical assessments, others rely exclusively on exams.

32. The Steering Committee recognizes that adoption of the Competency Profile as a national standard and consideration of the draft fitness and suitability standard will trigger many questions about implementation and the impact on the admission practices and processes of individual law societies. Before any recommendation on options for implementation can be made, the implications, advantages and disadvantages of each need to be fully explored and understood. Balancing this need for thoroughness is a recognition that a number of jurisdictions are under pressure to change their admissions programs, and we thus need to move quickly.

33. The Steering Committee recommends the following process for completion of the National Fitness and Suitability Standard and development of recommendations for the implementation of national admission standards:

- (a) The Steering Committee be requested to complete the drafting of the National Fitness and Suitability Standard and be mandated to consult on the draft with the law societies with a goal to submitting the standard to Council for approval by June 2013;
- (b) The Steering Committee be mandated to identify and explore the options for implementation of national admission standards, including options for teaching and training, and for mechanisms to ensure that all candidates meet the national standards, taking into account the implications of each option for law societies and future candidates and its likelihood to achieve a high degree of consistency in admissions;
- (c) The Steering Committee be mandated to consult with leaders and senior law society staff as well as such other stakeholders as it sees fit on possible options for implementation;
- (d) The Steering Committee be mandated to make a recommendation to Council on implementation of the national admission standards that includes a method for assessing compliance with the standards and addresses issues related to teaching and training of candidates;

- (e) The Steering Committee be requested to include with its recommendation a detailed roadmap of the process for implementation, a plan to manage the transition to national standards, and identification of the resources (both national and local) that will be necessary to manage the implementation process;
- (f) The membership on the Steering Committee be maintained with the addition of two new members, at least one of whom is a member of Council;
- (g) The Steering Committee be requested to provide Council with an anticipated timeline for its work and to provide regular progress reports to Council and law societies, the first being provided no later than the March 2013 meeting of Council.

Stakeholder Engagement

34. Changes to standards for admission to the legal profession have the potential to have an impact on many different stakeholders. Law society leaders and staff, law deans and other members of the legal academy, law students, members of the profession and the public can all be expected to have an interest in the work of the National Admission Standards Project. The Steering Committee recognizes the importance of consulting with and keeping interested stakeholders informed.

35. As noted above, the law societies have been actively engaged since the outset of the project and this will continue in Phase II. In addition to the active involvement of many law society staff and other representatives, we have endeavoured to ensure that leaders and staff of the law societies have been kept informed about the content and progress of the project through letters from President John Hunter and, more recently, teleconferences with senior admissions staff and chairs of admissions and credentialing committees. These information sessions will continue throughout the project.

36. The development of the National Fitness and Suitability to Practise Standard (described above) will involve consultation with each law society, and it is likely that the views of other key stakeholders will also be sought. Consultation will also be an essential element in the identification and ultimate recommendation of options for implementation of the national standards. In addition, as work on implementation moves forward ensuring that the broader group of stakeholders is kept aware of the goals and progress of the project will be important.

Summary of Recommendations

37. The Steering Committee recommends that the Competency Profile attached as Appendix "B" be approved by Council of the Federation as a national admission standard.

38. The Steering Committee recommends that the Competency Profile be submitted to member law societies for approval on the understanding that the law societies' adoption is subject to the development and adoption of a plan for implementation.

39. The Steering Committee recommends that the following process for completion of the National Fitness and Suitability Standard and development of recommendations for the implementation of national admission standards be approved by Council of the Federation:

- (a) The Steering Committee be requested to complete the drafting of the National Fitness and Suitability Standard and be mandated to consult on the draft with the law societies with a goal to submitting the standard to Council for approval by June 2013;
- (b) The Steering Committee be mandated to identify and explore the options for implementation of national admission standards, including options for teaching and training, and for mechanisms to ensure that all candidates meet the national standards, taking into account the implications of each option for law societies and future candidates and its likelihood to achieve a high degree of consistency in admissions;
- (c) The Steering Committee be mandated to consult with leaders and senior law society staff as well as such other stakeholders as it sees fit on possible options for implementation;
- (d) The Steering Committee be mandated to make a recommendation to Council on implementation of the national admission standards that includes a method for assessing compliance with the standards and addresses issues related to teaching and training of candidates;
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