



# E-BRIEFING

FEDERATION OF LAW SOCIETIES OF CANADA



FALL 2016

## Message from the Federation President

I like to think that we at the Federation have learned a few things over the past couple of years. I know I certainly have. One of those lessons has been the value of bringing people together - mostly face to face - to talk to each other about issues of mutual interest and concern. I have been, like many of you, a participant on innumerable teleconferences. While sometimes unavoidable for logistic or economic reasons, they invariably do not permit all participants to say what they need to say when and how they want to say it. As for emails, can any of us say we haven't misinterpreted someone else's intent or, in turn, been misinterpreted?

All of this has made me a convert to the benefits of sitting down in-person with colleagues whenever possible and preferably in a location that works for them. We did this through our governance review process as much as was practically possible. This made for some painful, awkward, blunt discussions. This also made for some amazing, inspiring and hugely productive discussions.



I am persuaded it was worth it but judge for yourself. After 18 months of consultation and debate, our Council adopted new governance [policies](#). These clarify the role of the Federation and how it makes decisions, and spells out the duties and expectations for the various people involved in its oversight and operation. The new policies also create enhanced structures for ensuring input from key individuals such as law society Presidents and CEOs, and improves the way the Federation does business in the interest of its members.

These governance policies make for a stronger Federation. The process also proved how ready we were for governance change and, even more importantly, how critical it is for the Federation to listen, and I mean really listen to our members and deliver the value they want from the Federation. The value proposition for law societies is everything.

Our governance review process has not just made me an expert traveller and Aeroplan points accumulator (what do you do with all those points when all you want to do is sleep in your own bed???).. It has also yielded important insights, not only about the internal workings of the Federation, but about the larger questions around how autonomous provincial and territorial bodies can come together in the public interest to collaborate on national projects.

Good communication is essential to nurturing good relationships. And being present and accountable to the Federation's owners is, in my view, the most important part of my job.

So, what about planning? Well, our next important step is the work to update the Federation's strategic plan. The planning process will involve input from key law society leaders including Presidents and CEOs, as well as Council and senior staff. Law society leaders will have an opportunity to reflect on the Federation's future strategic direction before coming together in a planning workshop on October 21st in St. Andrews-by-the-Sea, New Brunswick. Law societies will need to grapple with the tough job of making choices about the matters upon which we might focus. A key to all of this will be to ensure that the strategic priorities of the Federation align with those of its member law societies. I am an eternal optimist and I am therefore confident we will get there.

Before my presidential term began, I did some planning. I hoped to get to every jurisdiction across the country before my term was up. I am almost there with less than three months to go although my plans for the next three months have become a little complicated what with the SCC appointment process and the whole going-to-Ottawa-all-the-time-committee. Alas, the best-laid plans...

I look forward to seeing you all soon - in-person!

## Annual Conference Focuses on Preparing Legal Professionals of Tomorrow

The Federation will hold its 2016 Annual Conference in St. Andrews by-the-Sea, New Brunswick on October 19th and 20th. The conference is being planned in partnership with the law school community and will focus on preparing the legal professionals of tomorrow.

Presenters from Canada's law societies and the legal academy will discuss a range of topics dealing with "tomorrow's lawyer" including experiential learning, understanding the respective roles and operating realities of the law societies and legal academy, and responding to the Calls to Action issued by the Truth and Reconciliation Commission.



The conference will open with a presentation by Paula Littlewood, Executive Director of the Washington State Bar Association. Drawing on the groundbreaking work being done in the United States, Ms. Littlewood will share the latest data on skills new lawyers need to succeed, including initiative, leadership, professionalism, grit, time management, creativity and innovation. Ms. Littlewood will also provide examples of how American law schools and legal regulators have partnered to help students meet the demands of practicing law.

One of the goals of the conference is to re-imagine the relationship between law schools, law societies, the Federation and the Canadian Council of Law Deans, and to pave the way forward for ongoing dialogue and collaboration.

## Federation at the Supreme Court of Canada



The Federation was represented by Mahmoud Jamal of Osler, Hoskin & Harcourt LLP, pictured here on the left with Alberta Privacy Commissioner David Rankin.

The Federation periodically intervenes at the Supreme Court of Canada on matters of national interest. The Court recently granted leave to the Federation to intervene in the matter of *Green v. Law Society of Manitoba*. The case involves a challenge to a law society's authority to require members to undertake continuing professional development activities and to suspend members for administrative infractions without a hearing. Neil Finkelstein of the Toronto office of McCarthy Tétrault is the lead counsel for the Federation in this matter. The hearing has been tentatively set for October 7, 2016.

The Federation was also granted leave to intervene at the Supreme Court of Canada in the case of Information and Privacy Commissioner of Alberta v. Board of Governors of the University of Calgary. The case raises important questions about the power of third parties to compel production of information protected by solicitor-client privilege. The hearing was held on April 1, 2016. The Federation was represented by Mahmoud Jamal of Osler of Hoskin & Harcourt LLP.

## Responding to the Calls to Action of the Truth and Reconciliation Commission

On the direction of the Federation Council, the Federation Executive has established a working group to develop recommendations on how to best respond to the Calls to Action in the final report of the Truth and Reconciliation Commission (TRC).

The Council recognized that engaging and consulting with representatives of Canada's Indigenous peoples will be essential in determining next steps. Council also acknowledges the importance of ensuring that the Federation's efforts complement ongoing activity by individual law societies as they also respond to the TRC's report.

The Federation's working group is chaired by Shannon Cumming, President of the Law Society of the Northwest Territories. He played a critical role in the formative years of the Northwest Territory Métis Nation, serving as legal counsel and Chief Negotiator.

Other members of the working group include:

- Sheila MacPherson, Federation Vice President and Council member representing the Law Society of the Northwest Territories;
- Bâtonnier Bernard Synnott, Council Member representing the Barreau du Québec;
- David Crossin, President of the Law Society of British Columbia;
- Dianne Corbiere, an Anishinabe from M'Chigeeng First Nation, past President of the Indigenous Bar Association, and a bencher of the Law Society of Upper Canada;
- Don MacKenzie, President of the Law Society of Prince Edward Island and Executive Director of the Mi'kmaq Confederacy of PEI; and
- Adam Letourneau, a Métis and Bencher with the Law Society of Alberta who has represented hundreds of survivors of the Residential School system.

**Call to Action 27:** 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.

**Call to Action 28:** We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, 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 antiracism.

## National Admission Standards Project

The Federation Council has accepted a recommendation from the National Admission Standards Project Steering Committee that all work stop on developing a national tool for assessing the competencies in the National Competency Profile. The recommendation was made after extensive consultations with law societies that followed circulation in September 2015 of the Committee's proposal for the development of a national qualifying assessment system for admission to the legal profession in Canada.

The Committee concluded that there is not a critical mass of law societies ready to move forward with this work. Consideration is being given to continuing work on other aspects of the National Admissions Standards project including the update of the National Competency Profile and development of a good character standard.

## National Discipline Standards Revised

In June 2016, the Federation Council approved revisions to the National Discipline Standards. The revised standards will be circulated to law societies soon for adoption and implementation.

The National Discipline Standards are designed to ensure uniformly high benchmarks for how law societies handle complaints and discipline processes. They address issues such as timeliness (e.g., the time it takes to resolve a complaint), public participation, transparency, accessibility, and the training of adjudicators and investigators. There are 21 standards in all.

After consulting with law society discipline staff, the Standing Committee on National Discipline Standards recommended revisions to Standard 3, which deals with the timeline to resolve or refer a complaint. Changes deal with situations when the complainant initiates an internal review or internal appeal of the complaint, and situations when a complaint has been referred back to the investigation stage from an internal review or internal appeal process.

Standard 9, which sets out how frequently each law society must report to its governing body on the status of discipline standards 1 through 8, was revised so that reporting on all standards occurs once annually.

The updated National Discipline Standards are available on the Federation [website](#).

The Standing Committee is working on several new discipline standards, including one that would give law societies the ability to take interim steps to protect the public before conviction, or while an investigation is ongoing. A standard requiring a process for early resolution of appropriate complaints and a standard dealing with quality measures are also under consideration.

The Standing Committee is also preparing a proposal for a voluntary Peer Support Pilot Project and resources for law societies implementing Standard 16 (sharing information with other law societies). The groundwork to develop a new national curriculum for law society adjudicators is now complete. The proposed curriculum will be shared with law societies shortly.

Law societies continue to make progress as they work towards meeting the aspirational National Discipline Standards. A review of law society feedback during an April 2016 meeting of the Standing Committee revealed that all law societies show improvements in performance since the official adoption of the standards in January 2015.

## 2016 International Conference of Legal Regulators (ICLR)

Representatives of Canada's law societies and the Federation have participated in the International Conference of Legal Regulators (ICLR) since its inception five years ago. This year, the Office of Disciplinary Counsel in Washington, DC will host the ICLR from September 14-16, 2016 under the theme "Legal Regulation: A World of Developing Ideas".

This year's event focuses on the core functions performed by legal regulators and issues that may be on the horizon. Sessions will cover best practices in discipline, fiduciary responsibilities and professional values and standards in practice, the application of technology to regulatory work, and the reinstatement and supervision of lawyers on probation.

Visit the [ICLR website](#) to see the full programme.

## NCA Update

In 2015-2016, the National Committee on Accreditation (NCA) received 1,718 applications for assessment, an 18 per cent increase over the previous year.

During that same period, 898 Certificates of Qualification were issued, compared to 892 in the previous year.

NCA candidates wrote approximately 5,000 exams during the year. The NCA holds examination sessions four times a year in at least four Canadian cities, including Vancouver, Calgary, Edmonton, and Toronto. Applicants may also request for permission to write in other cities in Canada and overseas. Examinations are typically written in 30 locations.

This fall, the Federation will carry out a comprehensive program review of the NCA.

## The 2016 National Criminal Law Program

The 2016 edition of Canada's largest criminal law conference was held in July in Charlottetown, PEI. The National Criminal Law Program attracted more than 700 participants, including 150 first-time attendees.

Under the theme "Substantive Criminal Law, Advocacy, and the Administration of Justice," highlights included breakout sessions that focused on appellate advocacy and advocacy before juries. The full program is available here:

This year's conference also introduced "mentoring breakfasts." These informal gatherings gave young lawyers the chance to interact with senior faculty members, who offered valuable insight into real-life case management experience and common practice problems encountered by prosecutors and defence counsel.

The next edition of the National Criminal Law Program is scheduled for July 10-14, 2017, in Vancouver, BC. Details will be available on the Criminal Law Program [web page](#).

## CanLII Update

Changes planned for CanLII Connects will be implemented this fall, including the ability for users to subscribe to push notifications (i.e. email alerts based on the content of a specific query).

CanLII recently took over the "Best guide to Legal Research" web site, which has been renamed "The Canadian Legal Research and Writing Guide". The domain ([legalresearch.org](http://legalresearch.org)) will not change. An editorial board has been created to help in the future development of the web site.

By mid-September CanLII will publish 4,000 cases from the DLRs (post 1980) that are cited in cases currently in the CanLII collection. The balance of the DLRs (pre-1980) that are currently cited in the CanLII collection will be published in a PDF format in the spring of 2017.

## The 2016 National Family Law Program

The Federation's biennial National Family Law Program was held in July in St. John's, Newfoundland and Labrador. The opening plenary focused on "Lessons from the Truth and Reconciliation Commission" and "The Canadian Human Rights Tribunal for Family Law." The Wednesday plenary dealt with adversarial ethics in a problem-solving environment. The program also included several social events for informal networking. More than 400 participants attended this year's program.

The next National Family Law Program will be held in Vancouver in July 2018.

## Federation Welcomes New Supreme Court Appointment Process

The Federation of Law Societies of Canada is pleased to participate in the new Supreme Court of Canada appointment process to be used to fill the vacancy created by the retirement of Justice Thomas Cromwell.

Federation President Jeff Hirsch has been appointed by the Prime Minister to represent the Federation on a new advisory committee responsible for recommending a short list of functionally bilingual, qualified candidates for appointment to the Court.

Details about the process can be found [here](#).

## 2016 Consultation on Model Code Amendments

The Standing Committee on the Model Code of Professional Conduct recently completed a consultation on proposed amendments involving rules on competence, dishonesty/fraud, and incriminating physical evidence.

The consultation also dealt with a new rule addressing responsibilities that arise when a lawyer leaves a law firm. A package of amendments will be circulated at the end of November and submitted to Council for approval at its March 2017 meeting.