

**NOTES FOR A SPEECH BY
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TO THE COUNCIL OF
THE CANADIAN BAR ASSOCIATION**

St. John's, Newfoundland and Labrador

August 14, 2014

(Check against delivery)

Thank you so much for your invitation for me to bring greetings on behalf of the Federation of Law Societies of Canada and to report on its activities. The opportunity to do so has become a tradition over time and represents just one way in which our calendars intersect through the year to help nurture the collegial and respectful relationship that our two organizations enjoy.

I had the privilege to address this Council once before, in February, and at that time I made the point that as a lifelong member of the CBA, I feel that I am among friends. So on this occasion, I want to salute someone who has become a

very dear friend and colleague. The CBA has a way of attracting to positions of leadership many of the best men and women that our profession has to offer, and the past year's experience reinforces this fact. In Fred Headon, the CBA, the wider legal profession, and the public at large have been the beneficiaries of a visionary, principled, dynamic and dedicated leader.

I want to congratulate you Fred on an outstanding year as CBA President. You have made a lasting contribution that will be felt for many years to come. It has been a privilege and a pleasure to have served as Federation President at the same time that you have led the CBA. Well done, Fred.

I have also come to know your successor, Michelle Hollins and I am sure she will also be an excellent leader and bring great honour to the CBA. Michelle, I look forward to working with you in the months ahead, and I have every reason to

believe that under your stewardship, our organizations will continue their excellent relationship.

I am sure of this because over the years, the respective roles of the Federation and the CBA have become well-defined and much better understood. On the one hand, the Federation brings together the 14 law societies that regulate Canada's 100,000 lawyers, Ontario's 6,000 paralegals and Quebec's 4,000 notaries in the public interest, a role mandated by provincial and territorial statutes. The CBA, on the other hand, plays a distinct, but complementary, and no less essential role – that of the national voice and advocate of the legal profession. It is this clarity of purpose of our respective organizations that distinguishes Canada's legal system of independent governance of the legal profession from many others in the world.

And it is this characteristic of our system – the distinctiveness of our roles – that provides an important backdrop to the outstanding work done by the CBA with its Legal Futures Initiative. A number of Federation and law society representatives are in the room today and I know they listened very carefully to Fred’s presentation of the Legal Futures Report. A significant number of recommendations deal directly with the regulatory environment and are a call to action by the Federation and the law societies. I appreciate that the presentation of the Report is not the end of a process and remains to be formally embraced by the CBA Council, but I am certain that the Report will add enormous value to the reflections that have already begun over the years by the Federation and Canada’s law societies about many of the issues addressed through the Legal Futures Initiative. For example, the question of Alternative Business Structures and entity regulation are already high on the agendas of a number of

law societies, so the addition of the CBA's perspective will be an important part of the discussion about how law societies can best regulate the profession in the public interest.

At the core of the Legal Futures Initiative is the proposition that change in the legal profession is here, it is profound and all of us, whether members of the profession, legal regulators or legal educators, have to adapt to the times and look forward, rather than to our historical comfort zones. I could not agree more.

The Federation and Canada's law societies have been dealing with change for some time now in a number ways, but one key aspect stands out - the days are long behind us where regulating the legal profession is simply a provincial or territorial endeavour. It is a national project.

Legal regulation in Canada is far different today than even 10 years ago. In the last 10 years, all law societies have decided to recognize the credentials, indeed the competence and integrity of every member of the legal profession no matter where they were first admitted to the bar without any additional training or evaluation.

So it begs the question – if any lawyer can move anywhere and have his or her licence recognized by any law society, is there any principled reason why the regulation of lawyers should be approached differently from one jurisdiction to the next? What should the average member of the public think?

The answer to that question, of course, is no, there is no principled reason for any substantial variation in how the public is protected by legal regulators anywhere in Canada.

If one accepts that answer, then the next question is how exactly do the law societies ensure there is consistency in

legal regulation? And the answer to that question is quite simple – come together under one umbrella and call it the Federation of Law Societies of Canada. But be under no illusions - arriving at consistent approaches with our Canadian federation is hard work.

I would like to take a moment highlight the status of just a few of the important projects that the Federation has been tasked to do by the law societies.

Earlier, I mentioned national mobility. The Federation is the guardian of this regime and the place where the mobility arrangements are negotiated and agreed upon. And it is the national initiative of the Federation from which all others flow and draw their principled existence. National mobility is why the Federation is focused on work relating to national standards.

For example, the Model Code of Professional Conduct has been adopted in six jurisdictions and is being considered in many more. We recognize that like any set of rules they are not set in stone for all time, so we set up a Standing Committee that is always looking at ways the Code can be improved and it will be here that some of the work of the CBA's Legal Futures Initiative will be brought for consideration.

In the area of lawyer discipline, we are also working toward high national standards. Our Council has just approved national standards that touch on fairness, timeliness and transparency of discipline processes across Canada. Now it is up to the law societies to approve the standards and work to meet and exceed them, if possible.

In the area of national admission standards, all law societies have adopted a National Competency Profile for entry level

lawyers and Quebec notaries and we are working on options to implement the profile. Work is also progressing on a national good character standard.

Which brings me to two key operational roles that the law societies have entrusted to the Federation: on the one hand, the review of existing and proposed Canadian law degree programs, and, on the other hand, the evaluation of the legal credentials of individuals trained outside of Canada and who wish to practice law in Canada.

These tasks are not inconsequential. As many of you know, the Canadian Common Law Program Approval Committee is in the midst of reviewing over 80 common law degree programs that are currently offered by 20 law schools in Canada to make sure they comply with the National Requirement that was adopted by all law societies a couple of years ago. At the same time, the National Committee on

Accreditation reviews about 1,400 applications and administers more than 5,000 examinations on an annual basis to internationally trained applicants.

With national mobility as the backdrop, the law societies have invested heavily in efforts to bring consistency to how lawyers are admitted to practice. In the area of legal education, they agreed on what law school graduates should have in the way of substantive knowledge and skills and these are set out in the National Requirement that all law societies have adopted. They agreed that the Federation should do the work on behalf of everyone to determine if the National Requirement is met. And the reason is simple. Consistency is better than inconsistency in a world where mobility is the rule.

The Trinity Western University experience so far offers perhaps the best argument for why national consistency is to be preferred over the alternative.

In the months since I last addressed this Council, four law societies have considered whether to accept future graduates of TWU's proposed law school into their bar admission programs. Three different answers were provided. Three different court challenges are now underway.

It is certainly unfortunate that on the issue of TWU, that some have said that the ties that bind the Federation together appear to be of variable strength from one jurisdiction to the next. However, I do not interpret inconsistency in this case, on a uniquely divisive and emotional social issue of balancing religious freedom with equality rights, to be the litmus test of whether the

Federation works or is relevant. I reject any proposition that says it is.

It needs to be said clearly, and repeatedly, that the Federation stands by all of the work that it has done so far in the area of setting national standards for ensuring that law school graduates will be competent when they apply to join a law society bar admission program. The Federation stands squarely behind the decision of its Approval Committee that graduates of TWU, if the university does what it promises, will meet the same standards of competence that are required of graduates of every other approved law program in Canada. It also needs to be said that no law society in Canada has said it would reject TWU's graduates from bar admission programs on grounds relating to the competence of the individuals who may apply.

In this sense, *on the issue of competence of law school graduates to join bar admission programs*, the Federation has done precisely what the law societies have asked it to do and the law societies, thus far, agree with the outcome. There is, in other words, national consistency on this point.

It is on the issue that the Federation did not have the authority to decide but only had advisory input – the matter of TWU’s highly controversial admissions and employment policy - that there are different approaches. Divisions are based, in part, on the interpretation of what the law currently is or what it should be, and how law societies should apply it. In time, this will be resolved by the Courts.

At the same time, I deeply believe that the formula of bringing law societies together through the Federation to establish, review and eventually modify the National Requirement, as necessary, is the right one. That is why the

Federation Council decided to move forward with developing a process that, as its first priority, will look at whether the National Requirement should include a non-discrimination provision, and if so in what form. Those interested in this work, including TWU, the CBA and others will have their say.

All of these examples respond to the law societies' recognition that the current issues we are facing in legal regulation must be considered from a national perspective. The same will be true of the regulatory issues that arise in the future, including many of those that arise from the recommendations of the Legal Futures Report.

And so I conclude with this. Changes to the landscape of legal regulation are here now and more are on the way.

We will be reviewing the CBA's Legal Futures Report with great care and interest. Congratulations to all of you for supporting this initiative that will undoubtedly advance the

essential debates that must continue to take place in order for the public to be well-served by our great profession.

On behalf of the Federation of Law Societies of Canada, I wish you a successful meeting.