



Briefing Note: Consistency in Admission Standards

Why Consistency in Admission Standards is Important

At the heart of the project to develop national standards for admission to the legal profession in Canada has been a drive for consistency: consistency in the standards and consistency in how they are assessed. The decision to embark on the National Admission Standards Project reflects an important strategic priority identified by Council of the Federation 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.

Presently, each law society regulates admission to the profession according to its unique admission regime. While all law societies consider competencies and good character and administer some form of testing, standards and processes vary significantly from jurisdiction to jurisdiction. Differences exist in law society requirements, assessment methods, and admission structures and processes. Law societies have historically operated autonomously in the area of admission to practise and this has worked well in an environment in which each law society is the gate keeper for the legal professionals admitted to practise in its jurisdiction.

The regulatory environment has changed dramatically since the genesis of the present admission practices of most law societies. In 2002, a national mobility regime was introduced to facilitate temporary and permanent mobility of lawyers between common law provinces in Canada.¹ National mobility of the legal profession is now governed by three agreements among the law societies – the National Mobility Agreement, the Territorial Mobility Agreement, and the Quebec Mobility Agreement and Addendum.² These agreements permit licensed practitioners to move with ease between jurisdictions. Admission to the profession in one jurisdiction now serves as a gateway to practise essentially anywhere in Canada.

Changing realities in the legal marketplace and regulatory landscape, and the need to break down interprovincial barriers led Canada's law societies to embrace mobility, and in doing so to recognize the credentials of members of the legal profession wherever they were initially admitted to practise. Mobility has resulted in an increase in the number of legal professionals who practise outside of the jurisdiction in which they were originally admitted to practise.

The Agreement on Internal Trade (AIT) provides a strong policy rationale for mobility and validates the decision of Canada's law societies to move to a national mobility regime. Changes to the AIT have enshrined mobility rights for all licensed professionals in legislation. As a result of the AIT, mobility is now a permanent feature of Canada's legal regulatory landscape.

¹ Prior to the national mobility regime most law societies were signatories to the Inter-Jurisdictional Practice Protocol 1994, which permitted short periods of temporary mobility and which required completion of examinations and, in some cases, additional time spent articling as a prerequisite to permanent mobility.

² The Quebec Mobility Agreement and Addendum will be rescinded when the National Mobility Agreement 2013, which extends the permanent mobility provisions to mobility between the Barreau and the common law jurisdictions, has been fully implemented.



National Admission Standards

Why Law Societies Should Care About Consistency

As a result of mobility, a growing number of legal professionals are now practising in a jurisdiction without having completed the bar admission program in that jurisdiction. How can a law society be assured that legal professionals practising in their jurisdiction, and for whom they are accountable, meet their standards? The only way to provide law societies with an assurance that all members of the legal profession in their jurisdiction meet an acceptable standard of entry-level competency regardless of where they were first admitted to practise is to provide for a measure of consistency in admission standards and assessment methods. National admission standards will ensure all newly called legal professionals meet a baseline of competence. Embracing consistent standards enables law societies to protect the public.

An admission to practise regime that is consistent across Canada will also likely increase public confidence in the competence of Canadian lawyers and Quebec notaries, given the mobile world in which legal professionals operate. It may also increase confidence in the regulatory bodies that govern legal professionals. Conversely, a lack of coordination among jurisdictions may result in the erosion of public confidence in the legal profession as a whole. As an independently regulated profession, inspiring public confidence in the legal profession through development of a transparent, national admission standards regime is an important goal, and one which ultimately supports the public interest mandate of all law societies.

Consistency in Admission Standards

The Council of the Federation identified two goals for the first phase of the National Admission Standards Project: (i) developing a national profile of the competencies required upon entry to the profession; and (ii) the drafting of a common standard for ensuring that applicants meet the requirement to be of good character. Through the collaborative efforts of senior law society admission staff members, professional credentialing consultants, and practising lawyers, a profile of entry-level competencies – knowledge, skills and tasks – was developed. The National Entry-Level Competency Profile for Lawyers and Quebec Notaries (“National Competency Profile”) was adopted by the Council of the Federation in September 2012. Work has also progressed on drafting a common good character standard.

The National Competency Profile

The National Competency Profile lists the knowledge, skill and task competencies considered to be the most important for entry-level lawyers and Quebec notaries to know and be able to perform upon admission to the legal profession. It is national in scope, applying to both common law and civil law applicants. Law societies have already embraced the National Competency Profile; it has been approved and adopted by 13 law societies, subject to the development and adoption of a plan for implementation. This high level of consistency in admission standards offered through a common competency profile is a first step toward ensuring that all practitioners have attained a consistent level of competency upon entry to the legal profession. The next step is to ensure that the standards are met through a common assessment process.

National Admission Standards

The National Suitability to Practise Standard

While applicants for admission to the legal profession across Canada are required to “be of good character”, there is no nationally agreed upon statement of exactly what an applicant must demonstrate to meet the requirement. The drafting of a common standard is intended to ensure that the requirements are clearly articulated and defensible and that the process of assessing candidates is consistent and fair. Identifying both a common process for the assessments and a set of common factors that should be considered will promote consistency both within individual jurisdictions and between jurisdictions. The latter aspect is particularly important in an era of ever-increasing mobility of members of the profession between jurisdictions. A National Suitability to Practise Standard consultation paper was provided to law societies and other interested stakeholders in the summer 2013. The feedback from stakeholders will facilitate the development of a final national standard on good character/suitability to practise.

Consistency in Assessment

Assessment, or testing, is the mechanism by which the knowledge, skills and abilities of applicants for admission to the legal profession is verified. Consistency among law societies in the assessment of the competencies set out in the National Competency Profile will result in a reliable, credible and fair method for ensuring that all entry level lawyers and Quebec notaries have attained the same level of competence. Without consistency in the method of assessment, there would be no guarantee that candidates have met the standard set by the National Competency Profile. When all applicants for admission to the profession across Canada are required to meet the same assessment benchmark, law societies can be confident that only those applicants who meet the profession’s high admission standards are admitted to legal practise in Canada.

Conclusion

The driver for a high level of consistency in admission standards is mobility, and the need to protect the public and safeguard the reputation of the profession in light of the fact that legal professionals can move between jurisdictions with ease. While consistency has other benefits, such as increased transparency and resistance to litigation due to consistent, defensible and fair processes, fulfilling the law societies’ public protection mandate is the prime incentive for change.