



Cambridge
Professional
Development

CamProf
Inc

**Program Review of the
National Committee on Accreditation
for the
Federation of Law Societies of Canada**

PROGRAM REVIEW REPORT

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Executive Summary

The FLSC commissioned this Program Review of the work of its NCA standing committee. The Committee assesses all applications from and runs a suite of examinations for internationally educated prospective lawyers seeking admission to practise common law in Canada.

The project work included:

- A review of the goals and policies of the NCA
- Interviews with 10 stakeholders, selected in discussion with the NCA
- A review of the NCA procedures, from the provision of information, its application and assessment process, the administration of exams, and appeals processes
- A survey of 700 current and recent applicants to ascertain their views on the process
- Another survey of all the main law societies and law schools, mostly concerning their views on the preparation and support of applicants
- A study and comparison of the National Requirement and the National Competency Profile
- Obtaining information on success and failure rates, in obtaining CQ and subsequently
- A review of the governance and organization of the NCA, and oversight by the FLSC Council
- Comparative studies of the systems used in Quebec, UK, Australia and for Accounting
- A series of three workshops, leading to preparation of this Program Review Report

We found much to praise concerning the NCA operations:

- Firstly, the central national approach provides a single point of entry for applicants.
- This is backed up by an attractive website with comprehensive information, including policies, exam arrangements, online application processes, payments, and tracking information. Email and telephone communication is also provided.
- We describe the overall administration as “exemplary”. It has handled a threefold increase in volume of applicants from a fourfold increase in the number of countries over the last eight years. It had 1700 applications in 2015. It set and marked 5000 exams over four sessions in 20 locations, including overseas. It has just seven staff.

But we also note scope for improvements:

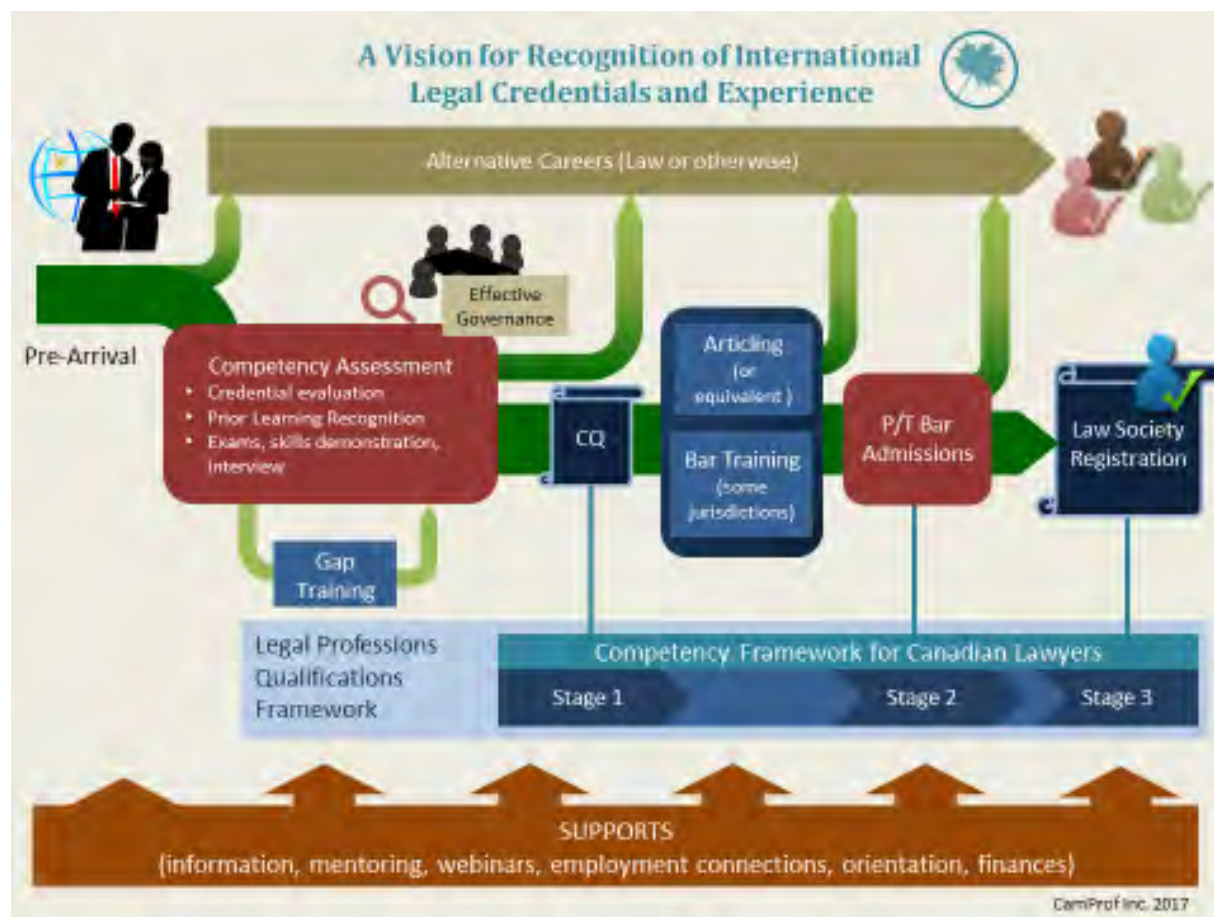
- There is confusion over the exact benchmark being used, in particular there is no clear process to assess the three additional NR competences of problem solving, legal research, and communications. The treatment of foreign experience is unclear.
- There are grounds for concern over the success rates of NCA graduates, but inadequate data to confirm, refute, or explore this.
- NCA applicants are more varied than ever. There is a need for a portfolio of support mechanisms (from numerous stakeholders) to cater for their diverse needs.
- The NCA process is just the first step in the applicant’s journey. There is a need for information on the total route, including on alternative legal careers.

We propose seven recommendations, with 28 specific actions, as listed overleaf. These present a structured route for the NCA, the FLSC, and its stakeholders, towards a modern, state-of-the-art, competence-based system for defining and assessing the competencies required. There is a mixture of short and longer term actions involving collaborating stakeholders in working towards an ultimate vision, presented on the subsequent page.

Summary of Recommendations

This report offers seven recommendations and 28 actions:

1. Develop a web information portal
 - 1.1. Implement specific improvements to current website
 - 1.2. Extend web presence
 - 1.3. Develop and signpost information on alternative careers
2. Build a strong competency-based foundation
 - 2.1. Develop a competency-based benchmark for entry to bar admissions
 - 2.2. Develop a competency-based benchmark for entry to practice
3. Strengthen the current NCA assessment and marking
 - 3.1. Develop/implement an NCA Quality Policy and Guideline
 - 3.2. Assess for three NR skills not currently assessed
 - 3.3. Improve defensibility of NCA exams
 - 3.4. Clarify recognition of professional legal experience in common law
 - 3.5. Remove wait times between exam sessions for failed exams
4. Develop a competency-based NCA assessment system
 - 4.1. Conduct a feasibility study, with cost/benefit analysis
 - 4.2. Develop consensus on which competencies must be tested and to what extent
 - 4.3. Identify types of evidence suitable to demonstrate performance criteria
 - 4.4. Develop assessment tools
 - 4.5. Train and qualify assessors
 - 4.6. Conduct a pilot, evaluate, revise and finalize
5. Work with stakeholders to develop a menu of supports to meet diverse needs
 - 5.1. Collect and review evidence for successful supports from other professions
 - 5.2. Offer a mentoring program
 - 5.3. Better understand current language gaps
 - 5.4. Work with stakeholders to adapt, customize and develop accessible (online) gap training
 - 5.5. Develop a comprehensive web-based self-assessment
6. Develop NCA data collection system
 - 6.1. Mine existing data better
 - 6.2. Reach consensus on data collection
 - 6.3. Identify the required resources and conduct a pilot
7. Strengthen governance and oversight
 - 7.1. Strengthen Committee membership
 - 7.2. Hold at least one face-to-face meeting each year
 - 7.3. Increase reporting and presence of NCA at the Council table
 - 7.4. Council to assume responsibility for NCA policy



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1. Introduction

1.1 Background

The Federation of Law Societies of Canada (FLSC) is the national body for the 14 provincial and territorial law societies of Canada. Its National Committee on Accreditation (NCA) is a standing committee of the Federation and is responsible on behalf of the member societies (except for the Barreau du Québec and Chambre des notaires du Québec) for assessing the legal education credentials of foreign-educated individuals who intend to seek admission to a law society of a Canadian common law jurisdiction. This is the first stage of their journey to become a practising lawyer in Canada.

1.2 Objectives

The Federation commissioned CamProf Inc to conduct this comprehensive review of the policies and procedures of its National Committee on Accreditation. The review was required to consider the standard against which applicants are assessed, their training and preparation, the testing mechanisms, and the overall governance.

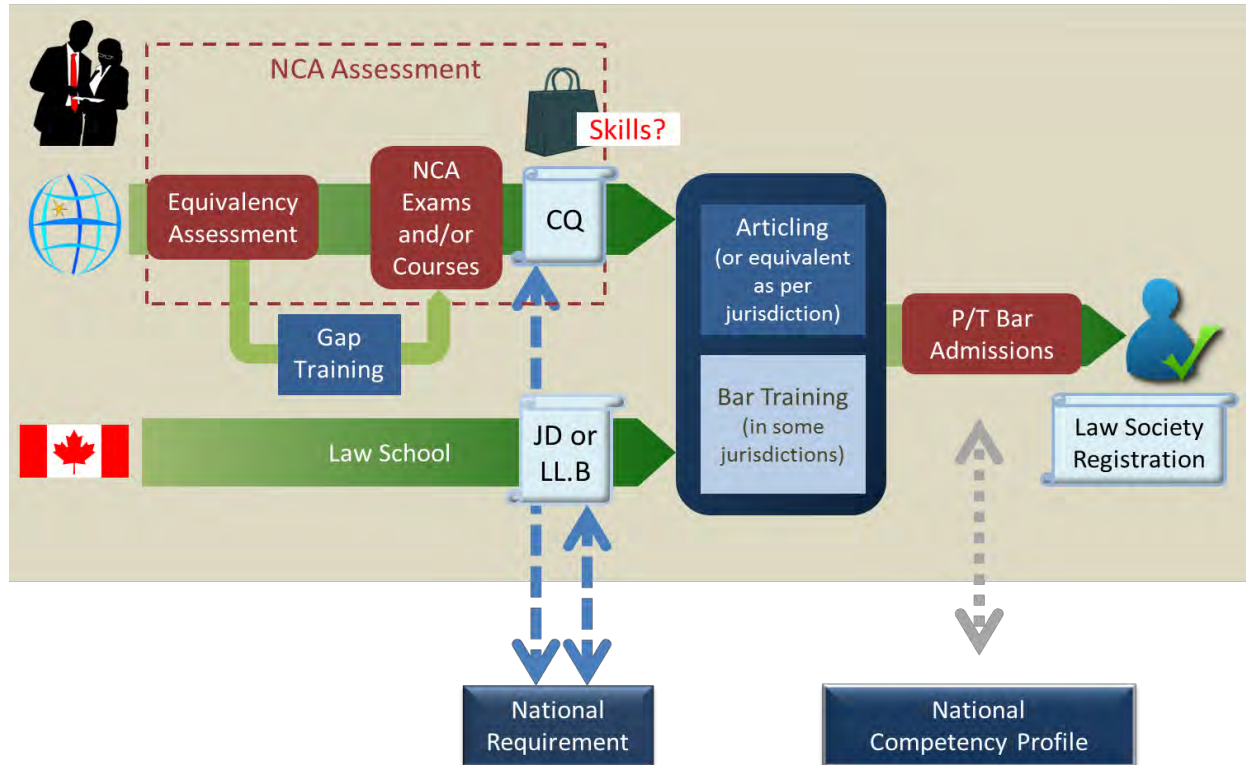
Particular requirements for the review included to:

- Review the NCA's goals, policies and procedures to identify strengths and weaknesses, and advise on changes to ensure that successful applicants have the necessary competencies
- Consider equivalent programs in peer jurisdictions or professions to highlight trends and best practices
- Consider the use of IT, particularly in data management and information availability
- Consider the NCA's effectiveness in improving the success of NCA applicants in law society licensing
- Prepare options for governance and organization structure
- Prepare recommendations for foreign credential recognition that would be fair, objective, transparent and consistent
- Prepare a Program Review Report for consideration by the Federation and the Societies

1.3 Qualifying for common law practice in Canada

As noted above, for the internationally-trained, the NCA program is the first stage in the journey to admission by a law society. Figure 2 below shows how the route that they must take compares with that travelled by the Canadian-trained. The National Competency Profile (shown at bottom right) is not necessarily relied on by any law society in setting its admission requirements.

Pathways to Licensure (Common Law)



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Figure 2 – Pathways to Licensure (Common Law)

This first stage is concluded by the applicant obtaining a Certificate of Qualification (CQ) from NCA, which certifies that his/her legal education and training is equivalent to that obtained in an approved Canadian common law program.

from the website of the relevant law society. Quebec is not included here as the *Barreau du Québec* and the *Chambre des notaires du Québec* do not subscribe to the NCA process.

Jurisdiction	Requirements
British Columbia	<ul style="list-style-type: none"> 9 months articling 10 weeks fulltime Professional Legal Training Course (PLTC) 2 exams based on the PLTC Practice Material and course work
Alberta Saskatchewan Manitoba	<ul style="list-style-type: none"> 52 weeks articling 6 months Centre for Professional Legal Education (CPLED) program (while articling)—20 weeks online, three one week face-to-face
Ontario	<ul style="list-style-type: none"> Experiential learning (can be done after exams): either articling (10 months) or law practice program (4 month training, 4 month work placement) Two exams: barrister licensing examination and solicitor licensing examination (each exam is self-study open book, multiple choice questions, 7 hours long)

New Brunswick	<ul style="list-style-type: none"> • 48 weeks of articling • New Brunswick Bar Admission Course (commitment of articles requires): 4 weeks intensive in-person, full-time training. Bar Examinations: 2 self-study open book exams, one on The Rules of Court of New Brunswick and one on the Statutes and Regulation of New Brunswick
Newfoundland and Labrador	<ul style="list-style-type: none"> • 12 months articling (includes 7 weeks Bar Admission Course) • Bar Admission Exam (during Bar Admission Course)—6 exams
Nova Scotia	<ul style="list-style-type: none"> • Articling (12 months) • Bar Admission Course, which consists of two components: <ul style="list-style-type: none"> • Skills Course (part of articling year): a three week in-person Skills Course and a three-part online Skills Course. • Bar Examination (two-day exam)
Prince Edward Island	<ul style="list-style-type: none"> • Articling (one year) • Bar Admission Course (BAC) and exams. BAC consists of a PEI component (two weeks in-person) and Nova Scotia component (three-week in-person)
Yukon	<ul style="list-style-type: none"> • 12 months of articling • Approved bar admission course (The British Columbia Professional Legal Training Course (PLTC) is an approved bar admission course and the Yukon has a standing arrangement with B.C. whereby a reduced fee to attend PLTC is charged to students enrolled in joint articles.) • Yukon Statutes Exam
Northwest Territories	<ul style="list-style-type: none"> • Bar admissions course in a neighbouring jurisdiction (the Law Society recommends the CPLED program delivered by the Legal Education Society of Alberta (LESA)) • Following the successful completion of a CPLED / bar admissions course and articles, students may then be called to the NWT Bar by one of two ways: 1)pass a bar admission examination provided by the Law Society of the NWT, or 2)become a member of a neighbouring jurisdiction and utilize the "Permanent Mobility" clause under the Territorial Mobility Agreement.
Nunavut	<ul style="list-style-type: none"> • 12 months of articles • The LSN is working with the Law Society of Manitoba so that students-at-law in NU can complete the bar admission examination requirement through the Manitoba CPLED online program. • Nunavut Statutes Examination may apply

1.4 NCA Processes

In order to assist understanding of the subsequent sections of this Review, the key stages in the operations of the NCA are presented here in sequence, and illustrated overleaf using the flowchart from the FLSC website.

Information and Application

There is a comprehensive web site with information for applicants and an online application form. The applicant must register, pay by credit card, and can then log in and complete the application form. The applicant must submit hard copy documents, e.g. Certificate/Letter of Good Standing. All evidence related to legal credentials, academic record or licensure must come directly from the originating body.

Assessment

The assessment is based on the applicant's academic record and any practice experience to identify gaps in the credentials required for equivalence to a Canadian law degree. The requirements may be satisfied through the NCA exams or by approved law school courses.

The key decision is based on the legal tradition of the jurisdiction where the applicant was educated, their degree level and specific curriculum. The minimum number of subjects assigned is five but can be higher.

NCA staff refer to three sources in step in conducting the equivalence assessment:

1. The website of the relevant national authority to check the accreditation of the institution and program
2. If there is no such authority, the national legal or legal education body
3. In the absence of either, the NCA's history of previous cases for that country, institution or course – which is readily available

Additional subjects (see panel above) are assigned when:

- The applicant took less than three years of legal education
- They do not have any undergraduate education
- Their legal education or experience is stale, which is defined as five years or more since graduation

Mandatory subjects

- Canadian Administrative Law
- Canadian Constitutional Law
- Canadian Criminal Law
- Foundations of Canadian Law
- Canadian Professional Responsibility

Other core subjects

- Contracts
- Torts
- Property
- Business Organizations (formerly Corporate Law)

Possible additional subjects

- Civil Procedure
- Commercial Law
- Evidence
- Family Law
- Remedies
- Tax Law
- Trusts

Possible language test

- Law school courses or programs

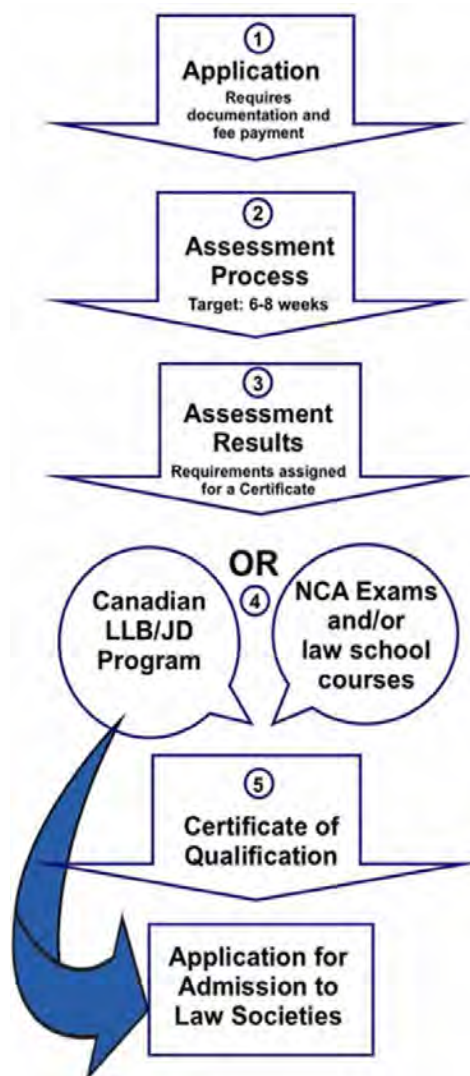


Figure 3 – NCA Flowchart

Legal experience as a licensed lawyer in a common law jurisdiction may compensate for some deficiencies.

A language test, either the International English Language Testing System (IELTS), or an equivalent French language test, the TESTCan test, may also be required.

The result is a decision on which exams or courses the applicant must take.

The NCA system produces a three-page document which sets out the requirements assigned for certification. All assessments are reviewed and signed personally by the Managing Director, then emailed and mailed to the applicant.

The time to assess an applicant's file varies between several minutes for a simple case (recent graduate of an American Bar Association (ABA) approved law school) to up to half an hour for a more complex case (graduate from a country such as Ghana from which NCA receives few applications).

The FAQs on the website state that the timescale for assessment is "normally 8 weeks". In practice, this varies because assessments are staged in batches through the steps of "Waiting Documents", then "Assessment Pending". Secondly, assessment work is scheduled to meet the quarterly exam registration dates so that as many applicants as possible can register. Currently, all files fully ready for assessment are being assessed within three weeks.

The requirements stipulated in the assessment may be satisfied either by NCA exams, OR by course(s) at law school OR a combination thereof. In some cases, applicants are required to complete the entire law school program, e.g. for non-common law applicants. Pre-approval by the NCA of the selected law school courses is required. Official transcripts of course-work and results must be submitted to NCA.

Appeals against assessment

Any appeal is submitted online. Appeals are heard by a panel of three NCA Committee members, meeting up to four times per year, dealing with up to ten appeals per session.

Organization of exams

There are four exam sessions a year. These are offered at six standard Canadian locations and one other standard location in Delhi, plus several others at various law schools and law societies, with some ad hoc arrangements overseas, e.g. London, Chicago, sometimes up to 20 in all. All subjects that are offered in a

given session are offered at all sites. Not all subjects are offered every session, but the five mandatory subjects are offered in every session. The remaining subjects are either offered in January and August or May and October. Exams are fact-based, open-book, pen and paper, three hours each.

Setting and marking exams

Every exam is unique. Sample questions are on the website. For the five mandatory subjects, three examiners (each a top professor in their field) each set an exam and the marking guide. The examiner teams review each other's exam questions to ensure similar difficulty and length. For the other subjects, a single examiner sets the exam. All exams are reviewed by a legal writer from the University of Ottawa for typing errors, consistency, references, etc. and sent to the FLSC. The exams are printed, packed, sealed, and distributed to the exam sites.

Exam answers are sealed and mailed back to NCA for distribution to markers. Marking is entirely manual. Each examiner marks the completed exam for his or her exam using a marking guide. Typically, the examiners are given 3 to 5 year contracts. They have four weeks to complete their marking. They email back their marks and result - pass or fail with grade of failure. Examiners must prepare a fail memo for any failed exams. There is no complete or partial (spot check) second marking or review.

The Exams Manager records these results in the database. The system creates the pass/failure results memo which the candidate can download. The duration of this process is 10 to 12 weeks.

Reviews of failures are available at half-day sessions in the same six main exam cities, at no charge.

Failed exams can be retaken three times, and a fourth time if the applicant submits and completes a learning plan, upon approval of the Managing Director.

Exam appeals

All NCA exams are appealable, provided the applicant demonstrates “significant error or injustice”. The process is:

- Applicant submits a PDF letter via the online portal, with any evidence, and pays a fee.
- The Exams Manager considers whether the appeal meets the appeal criteria. She rejects any appeal that is based on illness or other reason not related to the exam content.
- If accepted, she sends the appeal to a different examiner who assesses whether the marking was “reasonable” – so not a full remarking.
- Very occasionally, a third examiner is called in.

Certificate of Qualification

Once the applicant has successfully completed all the prescribed requirements, they may request a CQ via the portal. NCA staff check whether all the conditions of their original assessment have been met. If so, the NCA issues the Certificate.

2. Methodology

2.0 Activity 0 - Project Management

This project was conducted over the six month period November 2016 to April 2017. It was structured as a series of nine complementary activities, each conducted by a small sub-team of consultants.

Activity	November				December				January				February				March				April				
Week commencing:	7	14	21	28	5	12	19	26	2	9	16	23	30	6	13	20	27	6	13	20	27	3	10	17	24
0 manage project				P		P			P		P		P		P		P		P		P		P		
1 review goals											r		R												
2 review procedures							o				r		R												
3 preparation for testing							Q	t	t	L	L	L	L	r	R										
4 Natl Competency Profile										r	R														
5 success, post CQ												r	R												
6 governance, structure													r		R										
7 peer jurisdictions				1		2						r	R												
Quebec																									
England							o		r		R														
Australia								o		r		R													
Accounting								o		r		R													
8 recommendations															W										
9 Program Review Report															o		r							R	
P Progress report	o Outline								r Draft Report				R Report				W Workshop								
					Q Survey questions				t Set up and test				L Live survey												

An Activity Report was produced for each activity and was reviewed by FLSC/NCA senior personnel. Short overall progress reports were submitted every two weeks, with additional day-to-day conference calls and emails throughout.

A series of workshops was held with NCA and FLSC staff and other stakeholders towards the end of the project, allowing further feedback and discussion. (See Section 2.8 later.)

2.1 Activity 1 - Goals of the NCA

For this activity, the research team reviewed FLSC and other relevant documents, met with NCA staff and conducted ten interviews with key stakeholders (identified in collaboration with the FLSC). The stakeholders included representatives of law societies, law schools, providers of training programs for NCA graduates, NCA examiners, and provincial and federal government.

ACTIVITY 1 INTERVIEW TOPICS

1. What works well and what could be improved in the process that internationally-trained legal graduates undergo in order to be able to practise in a common law jurisdiction in Canada?
2. What works well and what could be improved about the NCA's policies and practice regarding the assessment of a) graduates of civil law programs in Canada and b) applicants from non-common law jurisdictions?
3. Should the FLSC be concerned with the success of NCA graduates during articling, the bar admissions process and in practice? Why or why not?
4. How do the knowledge and skills of NCA CQ holders compare to that of graduates of Canadian common law programs?
 - 4.1 If NCA graduates have gaps, what are they and what evidence is there that these gaps exist?
 - 4.2 How can NCA graduates' gaps be most appropriately filled?
5. What role can the NCA play (if any) in filling the gaps, given FLSC's mandate?
 - 5.1 How can FLSC work with others (who?) in filling the gaps?
 - 5.2 What needs to be put in place if FLSC/NCA undertakes a new/changed role? (governance, processes, relationships etc.)
6. Role of the National Competency Profile in the NCA process?
7. Comments or suggestions for us to take into consideration during this review?

The list of documents reviewed and the stakeholders interviewed are provided in Appendix A to this report.

Although interviews with NCA applicants were planned for this activity, we received no response to repeated requests and were unable to conduct these interviews. However, we collected substantial input from NCA applicants from the applicant survey in Activity 3: Preparation for Testing.

This activity aimed to identify issues described by stakeholders pertaining to NCA's goals, policies and structures, and potential solutions put forward by stakeholders for these issues. Conclusions based on the findings of this activity raised points for consideration for the remainder of the NCA program review.

2.2 Activity 2 - Procedures

This activity commenced with a half-day visit to the NCA to meet staff and collect sample documents. This was followed by desk research, and reviews of documentation received from the NCA and the FLSC, FLSC-NCA web site information, and data and interview findings within other activities of the project, and a specific interview on the use of IT.

The main elements of the NCA procedures have already been described in Section 1.4 above.

2.3 Activity 3 - Preparing applicants

Two surveys were implemented for this activity: Survey 1 was directed towards applicants; Survey 2 was directed towards law schools and law societies. Both surveys were extensively pilot-tested by CamProf personnel in both French and English before launch.

The candidate survey was targeted at all current and former NCA applicants from 2012 – 2016, an estimated total of 6463. The survey contained a mix of 15 yes/no, multiple-choice and open text questions (Appendix C1 and C2). An invitation email (Appendix C3) was sent on January 20, 2017 with a link to the online survey. By February 1, 699 responses had been received, giving an excellent response rate of 10.8%.

The second survey was targeted to all applicable offices at the 21 accredited law schools and the 12 law societies within the scope of the NCA process. These 34 organizations operate in a variety of contexts and welcome varying numbers of internationally trained lawyers and graduates wishing to practise in Canada. The survey contained a mix of multiple-choice and open ended questions. Personal invitation emails were sent on January 21 and 22 with a link to the online survey (Appendix D1 and D2). FLSC staff were personally in touch with the respondents during the data collection period, and by February 13, 2017, 10 responses from the law schools and 8 responses from the law societies had been received, including all the larger ones. This sample may not be statistically valid, so the opinions and data collected may not indicate trends and may not be generalizable in all instances.

Since the *Fluid Survey* platform suggested in the proposal became unavailable in December 2016, the surveys were distributed through the FLSC's custom survey platform to ensure respondent data was stored on Canadian servers. The FLSC also translated the surveys into French. Analysis of the surveys proved time-consuming. The results were analysed in MS Excel 2016, using advanced analytical functions such as pivot tables. CamProf cross-referenced yes/no and multiple-choice responses with open text responses. For qualitative analysis of the applicant responses, we used *DEDOOSE*, a software application for analyzing qualitative and mixed methods research data.

2.4 Activity 4 - NR and NCP

This activity compared the competencies and learning outcomes in the National Entry to Practice Competency Profile for Lawyers and Quebec Notaries (NCP 2012) with the National Requirement (NR 2011), and discusses the relationship between the two documents. The goals of this activity were:

- To understand and describe the positioning of these two documents and their relationship
- To conduct a detailed comparison
- To understand the role of the NR 2011 as the basis for the NCA's assessment of international applicants' credentials

This comparison was based on a review of the two documents and a detailed mapping of the skills, knowledge and tasks listed in the NR 2011 and the NCP 2012. Issues raised in interviews conducted in Activity 1 were also taken into consideration. The detailed mapping was supported by a software tool from Vametric Inc (with whom CamProf has a business relationship). A detailed mapping record can be provided if useful to the Federation. This study has also been informed by discussions with NCA staff, and by interviews conducted within other activities of the project.

2.5 Activity 5 - Success rates

As the CQ certifies that the holder's education and training is equivalent to that of the Canadian-trained law graduate, it follows that NCA graduates' subsequent performance should not be dissimilar to that of the Canadian-trained. During the interviews conducted in Activity 1, we heard many reports (with qualifying remarks about there being little substantiating evidence) of NCA graduates being less successful than the Canadian-trained in obtaining articles, in becoming licensed, and in subsequent practice.

The purpose of this activity was to examine the success rates of NCA candidates in obtaining the CQ and in law society licensing so as to identify candidate needs, markers of success, gaps in candidate skills and knowledge, and promising practices to improve readiness for licensing.

For this activity, our team analyzed data provided by the NCA and data collected by the NCA from the FLSC member law societies. Conclusions were drawn based on the findings of our analysis, which raised points for consideration for the rest of the program review.

2.6 Activity 6 - Governance

The purpose of this activity was to review the existing governance, organization structure, staffing and budget and to make recommendations for their further evolution and development. A particular requirement was to consider the reporting and oversight arrangements of the NCA by the FLSC Council.

This activity was conducted by an initial visit to the FLSC and interviews with Jonathan G. Herman, Chief Executive Officer, FLSC and Deborah Wolfe, NCA Managing Director. There were also interviews with:

- Herman Van Ommen QC, Chair of NCA, Council Member and President BC Law Society
- Graeme Mitchell, recent chair NCA, former Council Member

The interview topics were:

Interview topics

1. Organization and structure of the NCA, any officers, panels, sub-committees or similar
2. Degree of autonomy
3. Reporting arrangements, e.g. to the FLSC Council, law societies, or others
4. Relations with these and other bodies, e.g. law schools
5. Rotation of NCA members
6. NCA working relations, e.g. any stresses and strains?
7. Your observations on the role of the NCA
8. Your observations on the performance of the NCA
9. What works well, what doesn't?
10. Any other governance aspects?

In addition, information was obtained by desk research, additional information supplied by the NCA, and findings from other activities, in particular the stakeholder interviews from Activity 1 on Goals, the work conducted within Activity 2 on Procedures, and from Activity 7 on Peer Jurisdictions and Professions.

2.7 Activity 7 - Peer jurisdictions and profession

In this activity, CamProf examined how internationally-trained professionals and graduates qualify for practice in other jurisdictions and in one other profession, and compared those practices with the NCA process in Canada. Our aim in doing so was to identify relevant trends and best practices that have a bearing on the NCA program review.

For this activity, the research team conducted web research and interviews for each jurisdiction and for the accounting profession. The list of resources consulted is provided in Appendix E to this report.

The peer jurisdictions studied were Quebec, the UK (England and Wales) and Australia. The original plan was to review just two jurisdictions, the UK and Australia. However, after discussion with FLSC representatives, it was agreed that Québec (the Barreau du Québec) and the accounting profession would also be included. Because of time limitations, the reviews conducted were of necessity short studies rather than exhaustive investigations.

The UK and Australia were chosen because they are prominent common-law jurisdictions that share a common legal heritage with Canada and are countries which receive large numbers of immigrants. Scotland was excluded from the study of the UK because it has a mixed legal system containing civil law and common law elements.

Quebec was included in this review because:

- It has a unique status among provinces in that it has high autonomy for immigration matters
- The Barreau is a peer to the other law societies that subscribe to the NCA process, but it conducts its own assessment of internationally trained applicants to the Quebec bar

The accounting profession in Canada was selected for review as it is similar to law in terms of status and rigorous training and certification requirements (which also include a practice component). Also, the accounting profession in Canada has recently united from its three former separate professions, and in so doing has consolidated and updated its procedures for handling international applicants.

In common law jurisdictions in Canada, the professions of barrister and solicitor are fused and the NCA process deals simply with lawyers. In the UK and some parts of Australia, the professions are separate. Similarly, Quebec distinguishes between *avocats* (attorneys) and *notaires* (notaries). (Quebec notaries provide a much wider range of services than notaries elsewhere in Canada, with functions resembling that of solicitors). Because of time constraints, we chose to focus initially on barristers in the UK, and *avocats* in Quebec. Also, as every state/territory in Australia has its own process for assessing the qualifications of the internationally-trained and it was not possible to examine all in the given time, we chose to concentrate on New South Wales, the state that receives the greatest numbers of internationally-trained applicants.

2.8 Activity 8 - Workshops and Recommendations

In order to help in preparing recommendations for the Review, a series of three workshops was held on successive days in Ottawa to report, discuss, integrate and explore reactions on the work of the above seven individual activities, and begin to build consensus and support for their subsequent implementation.

- Workshop 1, a full day for the entire CamProf project team on February 26, aimed at extensively peer reviewing and debating each activity's findings, arguments and conclusions. By the end of the day, integrated draft lists of findings, issues and recommendations had been prepared.
- Workshop 2, a half day on February 27 at FLSC with the entire CamProf team and NCA/FLSC staff, aimed at testing the reconciled results from the previous day, and preparing for the workshop with stakeholders the next day.
- Finally, Workshop 3, another half day on February 28 at FLSC with four important stakeholders, and three senior FLSC representatives further discussed and refined the project's tentative conclusions. Although stakeholder representation was limited due to time constraints, this

workshop validated the results and identified areas of support or potential difficulty that may influence stakeholder buy-in.

2.9 Activity 9 - Program Review Report

Work continued during March 2017 reviewing the results of the three workshops, finalising the individual activity reports, and preparing the Draft Review Report which was submitted in early April.

This was reviewed by senior client executives, leading to this final Program Review Report. It is expected that the Program Review Report will be presented to the June 2017 meeting of the Federation Council.

3. Key Strengths

Results from the activities and the workshops undertaken during our program review confirm that overall and in general, the NCA program is working well, within the scope of its current mandate. We noted many areas in which the NCA program demonstrates good practice - they are described below with reference to the NCA program's current role in the licensing process for the internationally-trained (see Figure 2 in Section 1.3, repeated here).

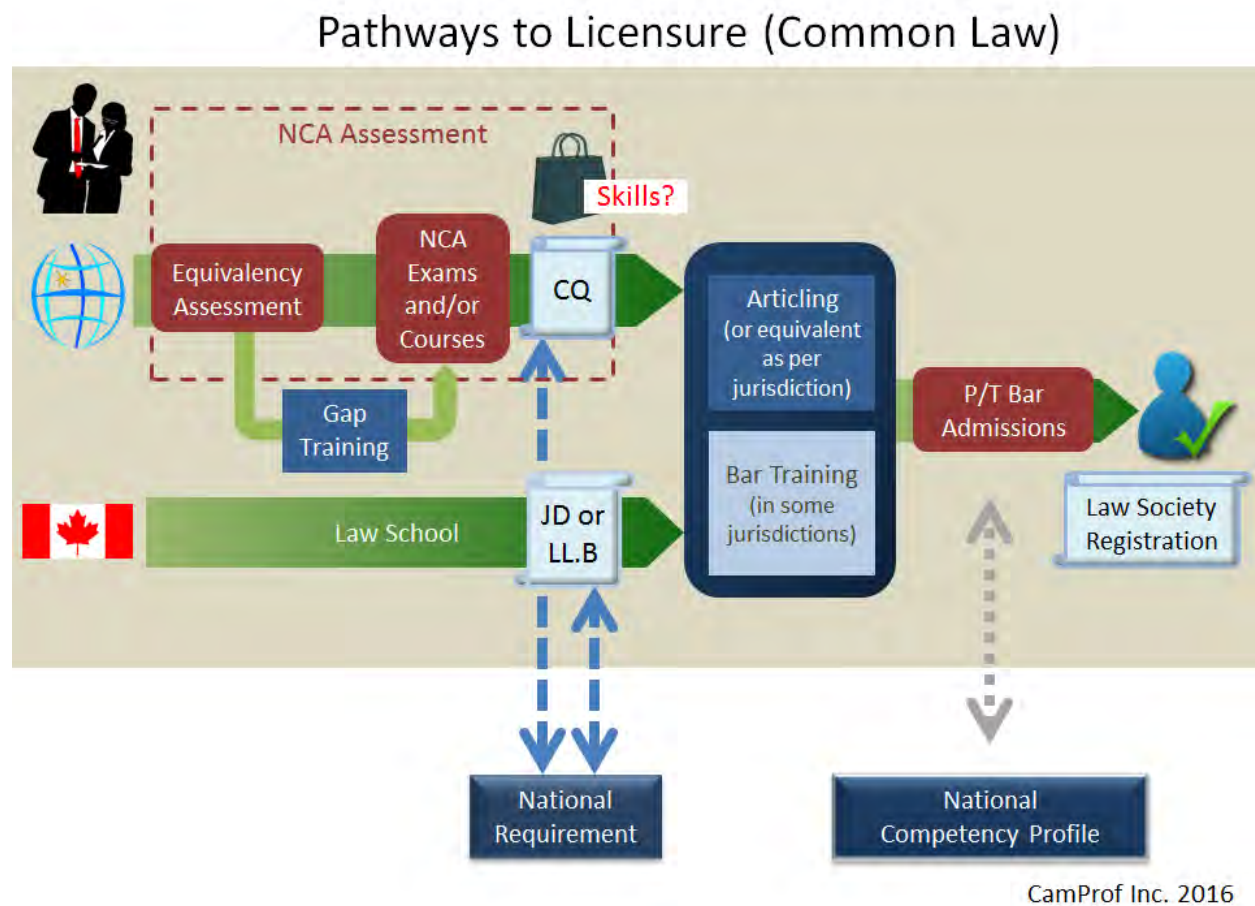


Figure 2 - Role of the NCA

3.1 Centralized approach - one door for applicants

The NCA program serves all law societies in Canada except those in Quebec in assessing the credentials of internationally trained lawyers and law graduates. This is based on a high level of cooperation and collaboration among the FLSC's members that benefits not only the FLSC members but also the internationally trained. Through the NCA program, the applicants have one single convenient point of entry to apply for the bar admission process – the first step towards qualification for law practice in Canada. So they are spared the difficulty of having to puzzle over the advantages and disadvantages of different entry points and making the appropriate choice.

3.2 Comprehensive website <http://flsc.ca/national-committee-on-accreditation-nca/>

The NCA program has a comprehensive website that presents the program clearly. There are separate web pages describing the program, the assessment process, how to meet assigned requirements, getting a certificate of qualification, NCA exam rules and information, exam schedules, NCA notices, and other resources including sample exams. NCA policies are also posted on the site.

This gathering and presentation of information in one place serves the applicants well. NCA staff have noted that the number of phone calls that they receive from applicants has decreased as NCA staff have made improvements to the website.

NCA candidates can complete an assessment application form, book exams, submit appeals, pay fees, and track their progress online.

3.3 Exemplary professional and efficient administration

All comments during the program review confirmed that NCA staff are professional and efficient.

The NCA has mapped out comprehensive procedures for the program which NCA staff carry out efficiently, ensuring smooth operation of the program. The procedures include receipt and timely processing of applicants' files; communications with applicants; exam administration including contracting for preparation and marking of examinations, scheduling and implementation at locations across Canada and overseas; provision of examination feedback; and appeal procedures. Overall, there is much to praise about the *mechanics* of NCA procedures and the smooth administration of the large number of applications (1,718 applications in 2015) by a small staff of seven.

We note that the volume of applications almost tripled since 2008 (Figure 4), and the number of jurisdictions in which applicants received their legal application increased fourfold (Figure 5). These are huge increases, and to its credit the NCA has made the required changes necessary to deal with the increasing influx and to manage the growth successfully without major mishap.

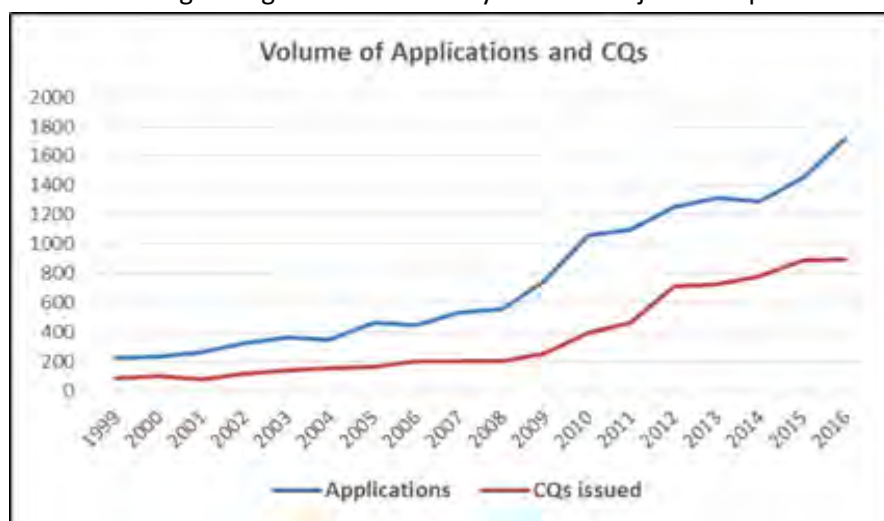


Figure 4 - Volume growth

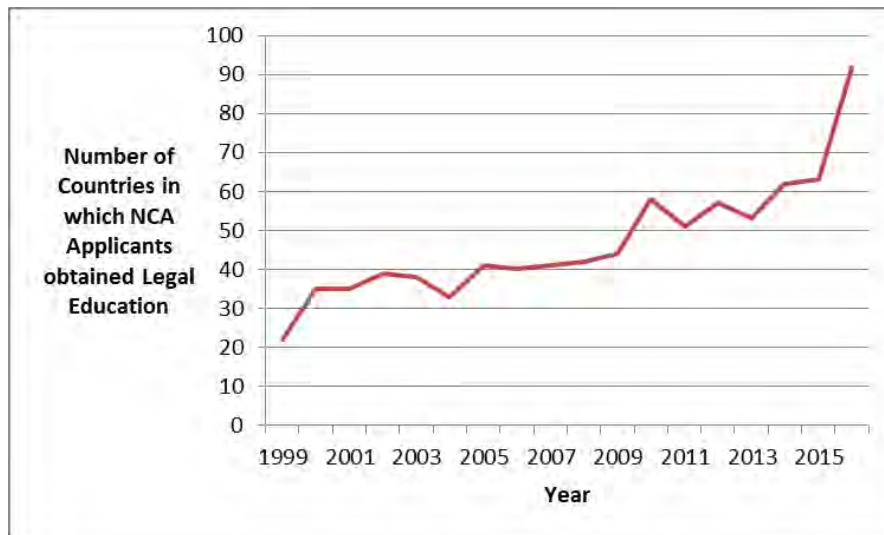


Figure 5 - Variety growth

In parallel and clearly allowing and supporting this growth, there has been progressive expansion in the use of IT, which has been successful and is generally working well.

We also note that we heard many reports of *improvements over the past eight years* in areas such as communications with applicants, presentation of information on the program on the website, and development and administration of processes and procedures.

3.4 Appeals

The NCA program allows for appeals at two stages. The number of appeals at the initial NCA credential assessment stage has reduced considerably, from about 40 per year (on smaller volumes) to just ten per year more recently. Very few of these appeals are successful. The low number of appeals and adjustments indicate that policies are applied consistently and correctly.

The number of appeals at the exam stage is also low and has been decreasing. In the year to May 2015, there were 716 failures from 4,889 exams (a failure rate of 14.6%). From these there were 43 appeals (6%). One was refused consideration. Of the 42 accepted for review, only 6 resulted in a change to pass, i.e. 1% of fails, 14% of appeals. The consistent pass rates, the low and declining proportion of appeals, and the very low volume of adjustments arising from appeal are all good indicators of exam consistency within the academic setting.

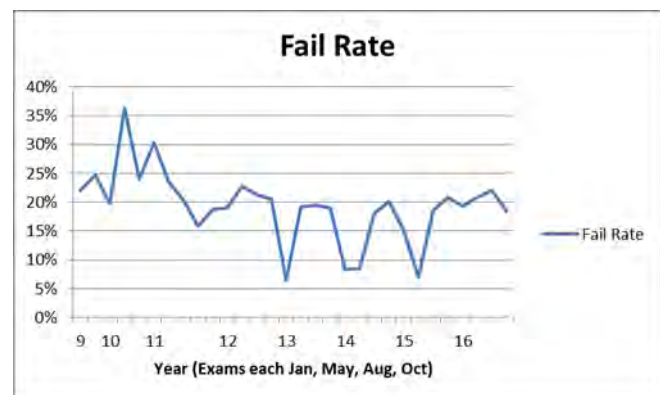


Figure 6 – NCA exam failure rate

3.5 Policies documented and available

The NCA has developed, documented and continued to update its policies. The current policies in application are placed on its website and so are available for all to consult. While we found issues with particular parts of the policy (which we will address in the next section), in general, the policies are well framed, well thought out, well presented, and contribute greatly to transparency and consistency of the program.

3.6 Program model based on equivalency to Canadian graduates

We note the NCA program's attempt at fairness in assessing for equivalency as the basis for issuing its Certificate of Qualification. Since this equivalency has been defined by the FLSC to be equivalent to a Canadian legal education, the NCA has worked hard to ensure that its exams are similar to that used in Canadian law schools. The NCA's syllabus and exam system is based on that of Canadian law schools, and the NCA program uses law school professors to set and mark the NCA exams. While we have issues with aspects of the FLSC's program model (see next section), we acknowledge the reasons for its choice of model and note the NCA's efforts to be consistent with this model. It is important to note that 37% of NCA applicants are either very or mostly satisfied; this suggests that the current program meets the needs and expectations of about one third of the applicants very well.

3.7 Attempt to integrate professional standards

We also note that the NCA has made the effort to integrate a first iteration of professional standards for law in its assessment practices.

The National Requirement (introduced in 2009 and revised in 2011) sets out the prerequisites for entry to the bar admissions programs in common law jurisdictions. As stated in the Memo on "National Committee on Accreditation Program Review" to RFP Potential Providers from Deborah Wolfe, NCA Managing Director, August 25, 2016:

"Each applicant to the NCA is assessed on an individual basis to determine whether they have an understanding and knowledge of Canadian law equivalent to that of a graduate of a Canadian common law program. Since 2015, candidates have been assessed against the National Requirement.

13. In anticipation of the coming into force of the National Requirement in 2015, the NCA modified its policies to require candidates to demonstrate competence in the same substantive law subjects as graduates of Canadian common law programs. NCA candidates are also required to demonstrate competence in problem solving, research and oral and written communications. The problem solving and written communications requirements are assessed through the examination process and plans are underway to develop a research module.

14. To satisfy the oral communication requirement, candidates must either have completed their legal studies in English or French in a jurisdiction in which English or French is an official language or have obtained a minimum specified score on stipulated English or French language tests.

15. In lieu of applying the institutional resource requirements contained in the National Requirement directly to applicants, the NCA requires candidates to have graduated from an institution that is recognized or approved by the relevant authority for the jurisdiction.”

While integration of the National Requirement (NR) has not been perfect (see our comments in the next section), the attempt to align NCA assessment to this standard is commendable.

In addition to the NR, there is a second standard, the National Competency Profile (NCP), which sets the standard for competencies required of legal practitioners at the start of their careers. Work on implementing this has been abandoned, but the NCA has also anticipated that if it is implemented at some future date, then “...as the National Requirement mandates a narrower range of competencies, heavily focused on substantive legal knowledge rather than skills, implementation may require a change in the competencies NCA candidates have to demonstrate.”¹

3.8 Open communications and responsiveness to candidate needs

The NCA Program shows itself to be responsive to candidate needs in several important ways:

- access to information and the online application process are largely available and good quality
- pre-arrival access to examinations and availability of examinations at different locations and times show a willingness to accommodate candidates if needed
- communications to applicants are timely and provide good feedback
- the NCA will respond to applicants by phone (but do require certain requests to be sent in writing)
- the development of resources such as NCA practice exams and the NCA guide on *How to Answer Fact Based Law Exam Questions*
- the NCA is conducting this Program Review, and NCA staff display an openness and desire to help in interviews conducted during this program review

3.9 Governance system in place

While we noted some areas for improvement (Section 4.4) in this area, the NCA program has a governance system in place, and generally the governance and operations of the NCA appear well regulated and function smoothly.

¹ Paragraph 16 from the Memorandum accompanying the RFP for this Review

4. Key Issues

4.1 What exactly is the benchmark?

The standard against which internationally educated applicants are assessed is clearly stated to be:

“Equivalent to a Canadian common law degree” and “Meeting the National Requirement”.

This implies that these two yardsticks are the same, or at least broadly equivalent. Whilst it is certainly true that all Canadian common law degree programs have been approved as meeting the NR, it does not follow that all such degree programs are at the same level or quality. Indeed data on performance on bar admissions exams from one large law society suggests that this is not the case.

Furthermore, in addition to the academic knowledge requirements, the NR requires three specific “skills competencies”:

- Problem solving
- Legal research
- Oral and written legal communications

The NCA does not have specific exams or any other form of assessment for these, but instead relies in part on candidate performance in its other exams. For the oral communications requirement, the NCA relies on the language of original study being in English or French in a jurisdiction where English or French is an official language, or it can require a specific language test. (See Section 3.7 above). The language level specified is IELTS 7. Australia also uses IELTS², with different minimum scores for the different components, but level 8 for writing and 7.5 for speaking. CPA Canada uses a different metric³, CLB 8 which is about the same as the NCA requirement.

The use of these proxy measures seems unsatisfactory for a profession where very precise legal drafting and communications are essential. It is not clear how the NCA exams (even with the additional language test) validly and reliably assess these practical skills.

In any case, there are some issues with the validity of the NR as a benchmark for the minimum requirements for entry into bar admissions process:

- NR focus is on substantive knowledge, it is weak on skills
- It was criticized in some stakeholder interviews as being stuck in the past, not forward looking
- Competencies are not specified; rather tasks are described

More generally, the co-existence of the NR and the NCP is confusing, even though they are clearly aimed at different stages in the professional formation of new lawyers. Several of our interviewees confused

² International English Language Testing System

³ Canadian Language Benchmark

the two documents. Both are short documents, but backed up by large project reports. They were created by different teams using different processes. Not surprisingly, they use a different structure and different language to express generally the same concepts. Although the NCP has been “approved” by all law societies, it has not been formerly implemented and its future is uncertain. Both are now several years old, and in need of review.

4.2 Success rates, gaps and lack of evidence

During the review we heard a significant proportion of stakeholders express concerns about the gaps in knowledge and skills of NCA graduates in comparison to graduates of Canadian law schools. Some stakeholders did caution that there was little evidence for these reported gaps, and that these supposedly common perceptions might be based on anecdotal evidence and individual impressions, invalid or unqualified interpretation of available data, and assumptions about poor performance of NCA graduates that influence expectations.

Stakeholders expressed concerns that:

- NCA graduates have more difficulty securing and succeeding in articles.
- NCA graduates have poorer performance in other training leading to bar admissions.
- NCA graduates have higher failure rates in bar admissions exams in comparison to Canadian-trained graduates.
- Many NCA graduates still fail bar admissions exams after bar preparation courses.
- NCA graduates lack skills in advocacy, legal research, writing and drafting of legal documents, application of legal principles and procedures knowledge, client service, ethics, professionalism, legal analysis and interpretation; understanding of legal norms such as the role of lawyer, rule of law, administration of justice.
- There are more practice complaints about NCA graduates. Law societies have received a number of complaints (large enough to be noticed) about beginning practitioners, which is unusual because complaints tend to be about lawyers who have been in practice for 7-12 years.

The data that we examined during the program review does show evidence of poorer relative performance at bar admissions for certain law societies on the part of NCA graduates compared to the Canadian-trained. For example, data published by the Law Society of Upper Canada shows first time failure rates on their licensing exams between March 2014 and March 2016⁴:

⁴ Professional Development & Competence Committee Pathways Pilot Project Evaluation and Enhancements to Licensing Report, Sept 2016. <https://www.lsuc.on.ca/uploadedFiles/PDC-Pathways-Pilot-Project-Evaluation-and-Enhancements-to-Licensing-Report-Sept-2016.pdf>

Legal Education Canadian or International with NCA	Failure Rate on First Attempt of Licensing Examinations
All Licensing Process Candidates	18.7%
Canadian law school JD/LLB only	13.0%
NCA Certificate of Qualification only	47.1%
NCA CQ Canadian born, educated abroad	35.4%

However, we were not able to draw further conclusions about the relative quality of NCA graduates and their weaknesses from this observation for the following reasons:

- The data on bar admissions performance from the various law societies is piecemeal and is not collected along consistent lines.
- Except for one law society, the data is not broken down by country. The data that we reviewed does not show relative performance among different groups.
- The data also does not show in which areas NCA graduates are failing. While poorer performance is shown on exams, there is no data on which areas NCA candidates are weaker in, and so further information about the type of actual gaps or deficiencies is not available.
- Several law societies, including BC and Alberta, require applicants to have an articling position before they allow them to apply for bar admissions whereas in Ontario, applicants can apply and write the bar exams without having an articling position. This may skew the results because Ontario candidates are less advanced in their progress towards bar admission.
- Available data does not provide any evidence as to the reasons NCA graduates may have difficulties in finding articling positions. Their difficulties may not be due to any deficiencies in skills and knowledge, but due to lack of connection to the system, or even to discrimination.

Current NCA data can be used to greater effect to analyze candidate needs and as markers of success, but only to a certain extent. While available NCA data can be better used to identify candidate needs at the CQ level, there are large data gaps in verifying actual deficiencies in NCA graduates compared to the Canadian trained. Law societies likely have data that they can access to pinpoint these gaps.

To accurately determine areas of weaknesses in NCA graduates, data needs to be collected by all law societies in a coordinated and consistent manner. Since the bar admissions process is not the same across the country, the current data that law societies have may not be in consistent form, and it will be a challenge to determine and agree on standards for data collection.

“We don’t know what the internationally-trained bring, and we expect them to look the same.”

4.3 Diversity of needs and the impact of culture

Responses to the candidate survey suggest that while the current NCA program works well for some (37%), it does not work well for others (42%), with 21% who were unsure or chose not to respond. Given the diversity of the sample itself (applicant stage, language, law type) this significant spread between high and low satisfaction suggests that the NCA program is not meeting the diverging needs of its customers equally well. The current NCA cohort brings with it a new degree of diversity: Canadians studying abroad and returning to Canada to practise are not the majority; they bring with them an increasingly diverse portfolio of education from 97 countries; with common law work experience (40%) across institutional and national boundaries.

Both surveys provided an abundance and a variety of relevant information pinpointing areas that should be carefully reviewed. In particular, responses pointed to:

- The many different hurdles (e.g. number of exams) and time it takes to receive a CQ, but also, considering the entire process, the length of time it takes to be called to the bar. From an applicant's perspective, the NCA process is only part of the journey.
- A perceived lack of clarity in NCA decisions. This appears to be particularly relevant for those applicants who bring common law (40%) and other types of valuable work experience.
- NCA applicants lack a student support network that Canadian law students benefit from. This includes study groups, sharing of high quality notes, access to previous exams, lawyering skills competitions, alumni networking.
- Candidates are perceived to lack knowledge and skills related to essential skills, language skills, academic skills, legal skills, lawyering skills, and Canadian culture skills. Moreover, and to make matters worse, there is a corresponding lack of flexible and specific training, coaching and other supports to diagnose and assist NCA applicants to remedy their deficiencies. Mostly, institutions report these services to be "out of scope" of what they can offer within their existing programs.
- One quarter of respondents showed interest in exploring alternative careers at various levels (including survival jobs) for example: paralegal, compliance officer, immigration consultant, anti-money laundering officer, human resources advisor, mediator, law firm management, law enforcement, sales consultant, front desk agent, food counter attendant.
- Difficulty in obtaining relevant work experience, including articling.

Analysis of survey data identified some (weak) evidence that culture does play a role in satisfaction and feelings of preparedness with the NCA program and the skills gaps perceived by law schools and law societies. Looking at the list of skills and knowledge gaps identified via the surveys, it appears there are several distinct culture-related gaps (e.g. networking, applying to articling positions, ethical and professional behaviour), as well as legal skills that are likely to be affected by cultural orientation. For example, oral and written legal communication can be impacted by differences in the communication style and degree of formality associated with a particular culture. However, to conduct in-depth analysis, reach detailed conclusions and make recommendations, data on cultural origin needs to be collected more consistently. It would also be helpful to review some academic work samples that are suggested to be lacking legal skills to ascertain whether cultural orientation has a relevant impact.

4.4 Oversight and governance

We have already remarked in Section 3.8 that the governance and oversight system is satisfactory, but we feel there is still room for improvement. We are concerned that the full Committee did not meet physically at all during 2016, and that the reporting to Council seems lightweight.

There is no doubt that the Federation and therefore its member societies are ultimately responsible for the conduct and decisions and finances of the NCA. In view of the growing interest by Government and Fairness Commissioners, and to assist Council to discharge its governance responsibility, membership of the Committee could be strengthened by including specific experts in foreign credential recognition and assessment practice.

Additionally, we note that NCA policy and changes to it are not normally formally approved by Council. This is an anomaly, unlike other standing committees, and should be corrected.

4.5 Transparent, objective, impartial and fair

Four provinces (Ontario, Quebec, Manitoba and Nova Scotia) including the two largest have established Fairness Commissioners to assess the registration practices of the regulated professions in their jurisdictions to make sure that they are transparent, objective, impartial, and fair for anyone applying to practise his or her profession, including law.

In the interviews for this review, it became clear that the law societies (as regulators) are concerned about their compliance with this fairness legislation. As regulators, they are exposed to this risk. In addition, the federal government is taking an interest, and as a further example, we are aware too of a complaint from the High Commissioner of Bangladesh which took a long time to resolve.

Criticisms could be made about how the NCA undertakes its role:

- The credentials relate to the knowledge base as well as the principles (at graduation from formal education), but not to many of the skills required by a practising Canadian lawyer.
- It is not obvious that an education taken many years ago is any less relevant for an immigrant lawyer than it is for a practising Canadian lawyer who graduated many years ago.
- It is not clear that this assessment of credentials is in accordance with the Lisbon Convention⁵ which calls for recognition to be granted in the absence of any *substantial differences*.

The main concerns appear to be about the recognition of foreign credentials, the relevance and defensibility of exams, and the assessment of work experience for the mid-career immigrant lawyer. It is necessary to demonstrate fairness, rather than just defend against unfairness.

Our recommendations later about moving towards a competence-based approach will help to address these issues.

⁵ The UNESCO Lisbon Recognition Convention 1999. See also page 38.

4.6 Provision of information

The NCA portion of the FLSC website is comprehensive and provides information needed by applicants to progress through the process. In the earlier Section 3.2 we have identified the many positive aspects of what FLSC communicates on its website. There also appears to be some room for improvement, for example:

- the NCA is only one part of the licensing process; applicants will find it helpful to understand the big picture and the subsequent steps
- specific information can sometimes be hard to find on the website
- more information that would help NCA applicants make informed decisions about whether or how far to pursue the NCA process; e.g. success rates at NCA exams, CQ attainment rates, alternative career information and pathways
- the value of work experience in the NCA process is not explicitly explained
- a more prominent entry point for international candidates would be helpful

4.7 Assuring exam quality

Assessment and exams are the core activity of the NCA and very high quality is essential because the results determine life-changes for the applicants. Assessment design is one major component of quality. So is rigorous and valid summative assessment as that is the means by which the NCA actually assures the capabilities of the candidates for certification.

The NCA assessment policy and procedures should enshrine best practices and principles in regard to candidate learning, competencies and assessment.

The key Canadian reference in this regard is the *Pan-Canadian Quality Assurance Framework for the Assessment of Foreign International Academic Credentials*, developed by the Canadian Information Centre for International Credentials (CICIC), part of the Council of Ministers of Education Canada (CMEC) www.cicic.ca. It has 41 principles and recommendations, built around six key quality assurance principles:

- Fairness
- Transparency
- Timeliness
- Consistency
- Comparability
- Credibility

With reference to these principles, our main concerns with NCA's examination process are:

- Examiners are law schools teachers and consultants (retired professors): experts working with their own law school related material and existing content. The benchmark is thus law school programs and existing exams: there is no evidence that examiners are using anything different

from what they are or were using as teachers. We know that course content and expectations vary from one law school to another. This certainly brings problems of consistency.

- As for transparency, the syllabi given to candidates for preparation are not built with learning outcomes and clear criteria for marking.
- The oversight on exams and marking may not be sufficient.
- There is no frame of reference for examiners.
- There are no existing standards or criteria for preparing a syllabi or exams.
- There is no formal moderation of the marking process.

4.8 Alternative pathways and careers

Not all applicants will be successful in qualifying or in practising common law in Canada. Stakeholders that we interviewed during the program review suggested that NCA could be more upfront and provide more information about alternative pathways and careers in which the internationally-trained can use their legal education, skills and experience.

The NCA program is the first stage in the process by which the internationally-trained qualify to practise common law in Canada. As candidates proceed through this process, some will drop out of the process or step away temporarily for a variety of reasons, including lack of success, change in priorities, family or other personal reasons. At the same time, some may find it necessary to pursue alternative employment during the process to cover their living costs.

According to an article, “*Employment Match Rates in Regulated Professions*” by the Hon. Jean Augustine (then the Fairness Commissioner for Ontario)⁶ in *Canadian Public Policy*, only 24.1 per cent of internationally educated immigrants are working in their profession, compared to 51.5 per cent of the Canadian born and educated. Alternative careers are therefore of great interest to internationally-trained professionals looking to apply their skills and experience outside of their original profession.

The candidate survey shows that one quarter of respondents do have interest in exploring alternative careers at various levels. Occupations within or related to the legal field that were mentioned included paralegal, compliance officer, immigration consultant, anti-money laundering officer, human resources advisor, mediator, law firm management, and law enforcement.

Information on alternative pathways and careers would therefore be helpful to NCA candidates both in enabling an informed decision about whether to start or continue the NCA assessment process, and to assist them to pursue other pathways in which they can apply their skills and knowledge (perhaps simultaneously with the NCA process in some cases). The current NCA website is comprehensive in presenting the purpose and mechanics of the NCA program, but does not offer this sort of contextual information to help candidates decide if the program (and law practice) is suitable for them.

⁶ Vol. 41, Supplement 1, 2015, <http://www.utpjournals.press/doi/full/10.3138/cpp.2014-085>

In Canada, the importance and provision of information on alternative pathways and careers has advanced a great deal in recent years. Many pre-arrival services for immigrants to Canada (see <http://www.cic.gc.ca/english/newcomers/before-services.asp> for current list) provide sessions on alternative careers and transferability of skills as part of the orientation to employment in Canada. Other examples include the materials developed by Health Force Ontario, such as:

- Career Options e-Resource: An exploratory resource for Internationally Educated Health Professionals (IEHPs) <http://iehpcanada.utoronto.ca/learn/course/index.php?categoryid=3>
- Alternative Career Toolkit <http://hireiehps.com/>, <http://www.healthforceontario.ca/UserFiles/file/Physician/Outside/alternative-career-toolkit-2013-en.pdf>

Even the Canadian Bar Association has a web page on career alternatives for lawyers: <http://www.cba.org/Publications-Resources/CBA-Practice-Link/Partnership-Toolkit/Is-this-for-me/Career-Alternatives-for-Lawyers>

Related to this issue is the possibility of alternative certification or restricted licensing offered in some professions. It was suggested during the interviews that an option for restricted licensing may allow internationally-trained lawyers with civil law experience to apply their experience and skills.

"It is hard to believe that someone with 15 years of practice in oil and gas law in Saudi Arabia or Europe, trained in the civil tradition, does not have useful things to bring to the Canadian experience".

One example of alternative certification offered by a profession in Canada is the Advanced Certificate in Accounting and Finance (ACAF) from the Chartered Professional Accountants (CPA). This is a nationally recognized certificate for those seeking a career in accounting and finance, but at a lower level than qualified CPAs. This certification provides an alternate pathway for new college graduates from a two-year program, working in an accounting function without a recognized credential, or an internationally trained accountant wanting to work in Canada. The ACAF program is made up of 11 courses delivered online: six technical courses and five applied courses. Registration for the ACAF is done through the provincial or regional CPA body.

Many professions have allied professions (some regulated and others not); for example:

- pharmacists and pharmacy technicians
- physicians and physician assistants
- registered nurses, licensed practical nurses
- engineers, technologists and technicians

A similar list might be compiled of allied professions in law, which could include:

- common law lawyers
- civil law lawyers
- paralegals

- law clerks
- legal assistant
- notaries

These occupations share common required competencies and an NCA candidate might choose to move from one to another at some point, due to aptitude, ability, or life circumstances. However, the pathways between these allied occupations are not clearly marked, and are unlikely to be easy, but there are already some limited examples:

- Ontario has a clear pathway for paralegals
- BC has one for notaries
- There are programs for legal assistant and law clerks at colleges across Canada

4.9 NCA as part of the qualification system for lawyers

In our review of NCA's goals, we were asked both by NCA staff and stakeholders to consider the question: *is the NCA doing what it should be doing, or should the NCA be doing something else?*

In examining this question, we debated *how* we would determine whether the NCA should be doing something else: on what basis should this determination be made?

Our review of peer jurisdictions and the accounting profession in Canada noted the evolution of different systems for assessing internationally-trained candidates, and how responsibility for various facets of assessment and for certification and licensing is assigned differently. These different systems arise from differences in local conditions, political and governance requirements, history, and tradition. In Canada, the current system for qualifying to practise law has evolved based on the profession's circumstances in Canada, resulting in the current arrangements for assignment of responsibility (and so distribution of risk) for assessment, certification, training and licensing.

As noted several times throughout this report, the NCA program is the first step in the process for qualifying lawyers for practice. Many stakeholders are involved in the entire process: law schools, the credential evaluator and the assessor of skills and knowledge (roles currently played by NCA), law societies, bar training providers, law firms (providing articling positions), the candidates at each step of the qualification process, and ultimately the clients (the public served by lawyers). Each of these play different roles in the process, and their interactions constitute the system.

The question of whether the NCA should be doing what it is doing, or something else, therefore, could be formulated as: what would be the best role for the NCA to play within the current system of qualifying lawyers for practice?

In addressing this question, stakeholder interests have to be considered, and here we note some concerns we heard repeatedly throughout the review:

- Is there a difference between licensed NCA graduates and the Canadian-trained in success as competent, effective, ethical lawyers, and if so, where does this responsibility lie (at the current NCA process level or elsewhere)?

As noted in Section 4.2 above, there is only limited sound evidence (except for anecdotes) that there is any difference between licensed NCA graduates and the Canadian-trained in success as competent, effective, ethical lawyers. However, the question of where responsibility lies raises a critical issue to be considered: what are the minimum standards of qualification for each step of the process and how do they link together? And linked to this question: how can NCA assessment fit seamlessly with other assessments down the line?

- Is the NCA assessing what is needed for the internationally-trained to be able to move on in their pathway to practise law?

From what we heard, the NCA is somewhat set in an academic model of evaluation of *knowledge*. But a strong case can be made for assessing the internationally-trained for *competencies* in practice, and identifying their gaps so they can be addressed.

- How can gaps and deficiencies of NCA candidates (not graduates) best be addressed?

It is not clear what role the NCA or the FLSC should play in addressing gaps and deficiencies of NCA candidates. The NCA cannot be the trainer and evaluator at the same time. There would be conflicts of interest and it would be contrary to ISO standards of assessment.

- How can gaps of NCA graduates best be determined and (if they exist) addressed if bar admissions processes are not consistent across the country?

This question speaks to an issue beyond the NCA's scope but has important implications for the fairness, transparency, and objectivity of the system.

Viewing the NCA program as part of an overall system has several implications:

- Any changes to the NCA's role must be considered within the context of the system. Simply tinkering with the NCA's mandate may address some part of the many issues identified, but is unlikely to address the issues comprehensively. Proposed solutions may require action or changes in other parts of the system.
- Law societies must reach agreement as to what role the FLSC should play in resolving identified issues, and collaboration among all institutions (educator, assessment/credentialing agency, regulator) in a system for qualifying professionals will be required to address issues.

4.10 Future proofing

There are a number of areas where we perceive that current trends and imminent changes will impact the nature of assessment to practise law.

Increasing Diversity

The number of internationally-educated lawyers has increased dramatically over the last decade, and so has their diversity in terms of:

- Country, education and language (see Figures 4 and 5 in Section 3.3). Additionally, increasing numbers of students now study in several institutions, often in different countries
- Number of years of practice and therefore both age (and family responsibilities) and time passed since obtaining the law degree
- Country of practice and therefore culture and legal system
- Area of practice, reflecting the increasing complexity of law as technologies, economies and societies develop and interact

No longer is it helpful to assume that there is a typical NCA applicant. Increasingly, systems have to concentrate on the actual diversity, the competencies that are required, and ask for incremental changes, rather than prescribe a single path which a candidate should have followed.

e-Learning

Currently, online law degrees and courses where two-thirds or more of the learning time/credits are done via e-learning are not fully recognized by the NCA irrespective of whether they are accredited in their home jurisdiction. Perhaps this follows precedent set by the American Bar Association (ABA). Such graduates are required to attend two years of in-class studies and the NCA works with them to provide appropriate advice.

The main concerns are:

- limited interaction among students and between students and faculty
- the possibility of impersonation
- the possibility that feedback to a student may be inadequate

These concerns, while valid, appear to be inadequate to justify the outright rejection of online courses and programs. Online education has become more commonplace and systems have been developed to overcome these (and other) shortcomings. Probably, it is time to take a more pragmatic and nuanced approach. For example, an increased focus on learning outcomes would allow the NCA to help weed out the online programs that lack minimum knowledge and skills provision. Also, identification of competencies that can only be acquired through real time and face-to-face interaction, would allow the construction of a defensible argument for limiting the extent of online learning.

Competencies and Learning Outcomes

As already mentioned, the competency-based approach offers solutions to many of the problems being encountered.

Increasingly, both internationally and in Canada, many professions are adopting a competency-based approach to defining the skills and knowledge required for practice. The adoption of competency-based frameworks has been driven by the push for increased mobility between professions and also between jurisdictions.

Competencies are defined as the skills and underpinning knowledge required to perform the work functions of a profession or occupation. In professions like law, there is also a need to hold (or at least consistently exhibit) certain attitudes and values (i.e. judgement) and so these are included within any competency profile or framework. The competencies are described as standards, or a list of the skills and knowledge required to perform the tasks. Most competencies will be applied to more than one task, for example a competency in writing in a clear, logical and concise fashion will be used in drafting a contract, in preparing a letter, or preparing a submission to the court.

In our review of assessment practices in other jurisdictions, we found a move towards a competency based approach in several places:

- In Australia: *Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission* is used by all Australian jurisdictions to guide assessment of qualifications in all jurisdictions. This document sets out the Practical Legal Training competency standards for entry-level lawyers.⁷
- In the UK (England and Wales): the Bar Standards Board has developed a Professional Statement which sets out the knowledge, skills and attributes required on the first day of practice and are now consulting on three possible options to align barrister training with that Professional Statement. If any of these options are eventually adopted, there would likely to be equivalent changes to the treatment of foreign applicants.

⁷ There are standards for:

- Skills (Lawyer's Skills, Problem Solving, Work Management and Business Skills, Trust and Office Accounting)
- Compulsory Practice Areas (Civil Litigation Practice, Commercial and Corporate Practice, Property Law Practice)
- Optional Practice Areas (Administrative Law Practice, Banking and Finance, Criminal Law Practice, Consumer Law Practice, Employment and Industrial Relations Practice, Family Law Practice, Planning and Environmental Law Practice, and Wills and Estate Practice)
- Values
- Ethics and Professional Responsibility

- Also in the UK: the Solicitors' Regulation Authority has a Competency Statement and a Continuing Competency Statement. It includes in its assessment of qualified lawyers from another jurisdiction an Objective Structured Clinical Examination (OSCE) to test the skills of interviewing, advocacy/oral presentations, legal research, legal drafting and legal writing in business, civil and criminal litigation, property and probate, and is extending this technique to all domestic and international applicants.
- In Canada, the recently unified CPA already has a Competency Map.

Law societies in Canada are aware of the increasing adoption of competency standards and competency-based assessment in professional qualifications. As noted earlier in this report, they have collaborated through the FLSC in developing the NR and the NCP. We earlier noted, especially in Sections 4.1 and 4.5, weaknesses in the description of competencies in these standards and also in NCA's current assessment of skills specified in the NR. The current disconnect between the NR and NCA as standards for the profession is also a weakness.

At different career stages, a lawyer will expect to have different levels of proficiency: in most cases proficiency will increase, but as a person rises in the profession, they are more likely to specialize so that certain competencies atrophy through lack of practice. A competent legal professional needs to have a given set of competencies, but may in fact have additional ones, and may have the legal competencies at a higher level than needed to enter practice.

The types of competencies will remain largely the same at all levels in the profession, from graduation and entry to articling/experiential learning through to becoming a principal in a legal practice (although the latter will need many business and leadership competencies as well as legal ones). However their expected levels of proficiency will be different at each career stage. It is possible to create a competency framework which reflects this, which can therefore be used as a benchmark or standard for comparison of an individual to see whether they have achieved an acceptable level. The emphasis is on what can be done, irrespective of what learning path led to achieving the competency.

When the competency based approach is extended to education programs, the program content is expressed in terms of what the learner will be able to achieve by the end of the program, rather than lists of topics and hours. Learning objectives become learning outcomes by the end of a program. This gives the educator the opportunity to select and design learning activities that reflect:

- The needs and the abilities of the learners.
- The nature of what needs to be learned (is it knowledge which can be learned through reading and discussion, or skills which need to be practised, or attitudes and values which need to be emulated and internalized).
- The resources and opportunities available.
- The availability of time to participate.

No longer is there a single form of learning activity that everyone must pass through irrespective of their existing preferences and competencies. Learning is valid however it was achieved, and there is scope to make learning quicker, cheaper, more effective and more satisfying.

It also enables assessment and qualifications to be rethought. Assessment becomes the collection of evidence that a competency has been achieved, and that evidence can be of any form (traditional paper-based exams for knowledge or paper-based competencies, but also videos of performance, examples of what has been produced by the candidate, witness testimony from colleagues, supervisors and clients, etc.). This should be particularly attractive to the legal profession.

In summary, the competency-based approach offers many advantages:

- The standards of competency can act as learning outcomes for qualifications and regulatory requirements.
- Candidates can assemble evidence to demonstrate that they have achieved the appropriate level of proficiency for each competency.
- Competencies can be assessed and accredited individually, with a final holistic assessment when the full set of learning outcomes has been achieved which gains the qualification/credential.
- By separating learning and the teacher from assessment leading to certification or licensing, potential conflicts of interest are avoided. In fact ISO 17024⁸ explicitly forbids the same organization both teaching and assessing the same people (unless extensive measures of separation are put in place).
- Experience can be recognized, to the extent that it provides evidence that competency has been achieved.
- The standards of competency can provide a 'currency' of learning and performance, which can be used by all stakeholders:
 - The individual professional - to identify learning needs, monitor on-the-job learning and generally to manage their own professional development.
 - The employer - to structure training, performance appraisals, recruitment, selection and promotion.
 - The client - to specify what expertise is required, when selecting which professional to engage.
 - The regulator - to specify and monitor standards for licensure.
 - The educator - to specify the learning objectives of a program or course, and to prepare their students for assessment.
- If the competencies are shared between related occupations (for example with paralegals), then it is possible to create progression paths, with clearly apparent identification of the additional competencies which are required, and routes to achieving them.

⁸ Conformity Assessment — General requirements for bodies operating certification of persons

Prior Learning Assessment and Recognition (PLAR)

Canada has been an early and leading advocate of PLAR: the acquiring of formal qualifications to recognize competencies gained by non-traditional routes. It can be seen that the competency-based approach makes it relatively straightforward to recognize competencies, since there is no longer an insistence on particular learning pathways. PLAR is particularly important

- when a new occupation or profession or area of specialization emerges and needs to become regulated, for example paralegals.
- when an occupation needs to recognize the competence of people who have gained their competencies in non-standard ways, for example in other countries, on-the-job, through experience and mentoring/coaching, in an allied occupation, or by self-study.

In Europe, it is now common for a qualification that is officially recognized to have a PLAR route, so that a candidate can demonstrate that they have achieved the learning outcomes of the qualification, even though they have not attended a formal course.

Alternative Assessment Techniques

In North America, there is a tradition of assessment by multiple choice questionnaires, and their development has been taken to a high level of sophistication by the psychology profession, with statistical analyses and claims of reliability and legal defensibility.

In many other countries, a rather different competency-based approach has been taken. If the competency being assessed is not paper or computer-based, then it may not be properly assessed by a written test. A medic whose ability to give an injection has been assessed by answering questions may know all the theory, but has not demonstrated real-life competence, and the same is true for most practical skills and performance. The medical profession has developed elaborate simulations (OSCE: Objective Structured Clinical Exams) to test these and some jurisdictions are using them for lawyers (see solicitors in England). However the competency-based approach, with its acceptance of any form of evidence, provided it is current, valid, reliable, authentic and sufficient, has opened the way to a wide variety of additional assessment techniques.

Digital Credentials ('Open Badges')

Open Badges are electronic tokens of achievement, affiliation, authorization, or other trust relationship, sharable across the web. They are based on Mozilla Open Badges, an open standard that allows all skills and achievements to be recognised and shared across the web. Schools, universities, employers and informal learning providers globally are using open badges to capture lifelong learning which is currently unrecognised. Open Badges represent a more detailed picture than a CV or résumé as they can be presented in ever-changing combinations, creating a constantly evolving picture of a person's lifelong learning. They are therefore particularly suitable for accrediting competencies, which can then be assembled into a whole qualification.

Lisbon Recognition Convention

The UNESCO Lisbon Recognition Convention (1999) on the recognition of degrees and periods of higher education study has been signed by 47 countries of Europe plus Canada, Australia, New Zealand, Israel and others. It requires countries to recognize a qualification or period of study in another signatory country (for example for entry to study or for a professional qualification or access to the labour market) unless it can show that there is a *substantial difference* between the two. Although not yet ratified by Canada, it is generally accepted and implemented, in particular by the Canadian Information Centre for International Credentials (CICIC), part of the Council of Ministers of Education, Canada. The precise meaning of ‘*substantial difference*’ in legal education may not be clear, but it is clear that minor differences are no longer an obstacle and detailed comparisons are no longer required.

Comprehensive Economic and Trade Agreement (CETA) and Brexit

The Comprehensive Economic and Trade Agreement (CETA) has been signed between Canada and the European Union and will come into force in 2018. In broad terms this encourages and includes a framework for the negotiation of Mutual Recognition Agreements between regulators. It may lead to increased numbers of European professionals seeking licence to practise in Canadian jurisdictions (and vice-versa).

The UK (the largest source of NCA applicants) has commenced negotiations to leave the European Union in 2019, but this may be extended. In due course, there is likely to be a trade agreement between Canada and UK, which may also include recognition matters.

5. Recommendations

This section presents recommendations for the FLSC based on our analysis of the key strengths and issues in the NCA program. There are seven recommendations offering a variety of actions the NCA can take on its own or with other relevant stakeholders towards a fair, objective, transparent and consistent foreign credential recognition program. The recommendations address the question at the heart of the program review: what should the NCA be doing?

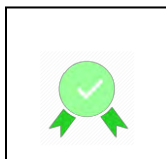
Together the set of proposed improvements provides a gradual path, with self-contained stages along the way to build confidence and encourage long term buy-in, including:

- Easy fixes that are intended to increase NCA applicant satisfaction
- Specific revisions addressing perceived and real inequities in the NCA program policies
- An online initiative to enrich the NCA brand to give the impression of choice rather than success or failure
- Pilot projects aimed at utilizing existing expertise and fostering collaboration with stakeholders
- A competency based approach that progresses towards ...
- ... a bold long term vision of a state of the art recognition system for foreign qualifications

Each recommendation sets out a number of actions guiding implementation.



These actions are “critical” to the NCA program - they should be implemented as soon as possible, to ensure that the NCA program is compliant with applicable legislation. They are identified with an exclamation mark.



The remainder should be carefully considered by the FLSC/NCA to allow the current NCA program to evolve into a state of the art FQR program. They are identified with a ribbon.

Each action is further defined with a suggested timeframe for implementation:

- S = short term (up to 1 year)
- M = medium term (up to 3 years)
- L = long term (more than 3 years)

A brief examination of the implications of our recommendations for the legal profession is presented in Section 6 Conclusions, following this section.

5.1 Recommendation 1: Develop a web information portal

The NCA website portion of the FLSC website is comprehensive and provides information needed by applicants to progress through the process. The candidate survey identified a need for more user-friendly presentation of information for applicants as well as a strong interest in alternative careers. The

candidate survey also identified an issue with transparency of how work experience was being recognized. To address the identified issues we suggest three implementation steps:

Action 1.1 	Implement specific improvements to current website	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			


- a) Develop a unique URL for the NCA program, for example www.internationallytrainedlawyers.ca.
- b) Integrate a step-by-step diagram of the entire qualifying process and a check-list of items to be completed by the candidate
- c) Build a specific section that promotes self-assessment. (This is described in Action 2.2.)
- d) The information already made available by the NCA should be made more transparent and convenient in one block of information:
 - description of the whole recognition system and competent authorities at each level
 - description of the assessment criteria
 - clarification on the language requirements
 - the role of the applicant, the competent recognition authorities and the decision-making body in the recognition process
 - the rights and obligations of the each of the parties
 - the schematic outline of the whole recognition process
 - the list of required documents (if possible adapted to the specifics of each country) and manner of their submission
 - explanation of the Certificate of Qualification
 - the approximate time needed to process an application
 - fees charged for all steps of the process (overview)
 - links to the law societies and law schools websites
 - conditions and procedures for appealing against a recognition decision

Action 1.2 	Extend web presence	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

As a program of the FLSC, the NCA is intended to be the first stop for internationally trained lawyers. This provides a unique opportunity for the NCA to act as an information centre for the entire process to qualify to practise common law in Canada. By adopting a holistic view and presenting information through the lens of an internationally trained lawyer/ law graduate, information can be tailored to all relevant stages of the qualifying process, from the first exploratory visit to the website to entry to practice. A road map layout will allow the visitor to identify clearly where they are in the process and what lies ahead. Examples of professions that have this kind of web presentation include accountants and pharmacists.

The use of media other than text with some interactivity (e.g. webinars, self-assessments) can increase understanding and impact on the reader. In this process, NCA may also consider developing a unique brand identity for the NCA program. (See for example: Internationally Educated Nurses <http://www.care4nurses.org/> or Broadly Experienced Foreign Architects <http://cacb.ca/en/welcome/>). Working with the law societies, there is an opportunity to explore and link extensively to provincial or national information such as federal agencies, law societies, universities, law schools.

The FLSC could also consider customizing information about the NCA to target different interest groups such as employers, public authorities, professional organizations, higher education institutions, newcomer serving organizations, etc.

Action 1.3 	Develop and signpost information on alternative careers	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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The NCA has an opportunity to frame the discussion of alternative careers as one of choice and not one of failure. The information should include alternative occupations and job titles, sectors, success stories, and perhaps some basic how-to career transition tools (like self-assessments). We recommend exploring the information provided by the Canadian Bar Association ([Toolkit](#), [Self-Assessment](#)), linking to it or adapting it for internationally trained lawyers.

5.2 Recommendation 2: Build a strong competency-based foundation

Those professions that have fully embraced a pan-Canadian competency approach to licensing (e.g. Accounting) boast stringent, fair, objective, transparent and consistent foreign credential recognition programs and licensing systems. The FLSC is no stranger to the benefits of competency based standards. In 2009, the Federation embarked on the National Admissions Project to develop a National Competency Profile, which the Council approved in the fall of 2012. *“To ensure we meet our mandate to regulate in the public interest, we need the assurance that all legal professionals practising in any Canadian jurisdiction have met the same standards of competence regardless of where they are first licensed”*. John J.L. Hunter, Q.C., Past President of FLSC, Federation News, October 21, 2012.⁹ Unfortunately when implementation did not proceed as planned, the project stalled.

The FLSC and its member law societies now have the opportunity to build a pan-Canadian competency-based approach based on the NR currently in use and the existing NCP. This new competency *framework* would enable the profession to reframe its learning objectives to a common denominator that all law societies can subscribe to. This approach would also provide a defensible and state of the art assessment of foreign trained law graduates and lawyers including not-yet-qualified candidates, set NCA graduates up for success, and is in accordance with current international best practice. Without the

⁹ Source: <http://flsc.ca/federation-council-approves-new-national-competency-profile/>, Accessed on Thursday, March 30, 2017.

foundation of well defined, comprehensive and forward-looking set of competencies (including underpinning knowledge), it will not be possible to achieve this goal.

Action 2.1 	Develop a competency-based benchmark for entry to bar admission process	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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At the moment, the National Requirement is used by two committees of the FLSC for separate purposes:

- The Canadian Common Law Program Approval Committee assesses whether common law programs provide graduates with the competencies and skills (the learning outputs) and have the academic program and learning resources (the inputs) specified in the NR.
- The NCA uses the National Requirement to assess equivalency of the legal education and professional experience of individuals who obtained their credentials outside of Canada or in a Canadian civil law program.

This use of the same standard for approval of programs and competency of individuals is not surprising, as it mirrors the decades of debate whether lawyer training is achieved better within brick and mortar academic institutions or at firms in a practical context. This debate will likely continue long after this report has lost its relevance. However, the context does impact the NCA program.

For centuries, the post-secondary education system has focused on inputs of knowledge, or even “what does a student have to do to get a degree?” This has led to NCA applicants being assessed using a similar focus; e.g. be educated in a classroom with fellow students or pass academic exams. Changing the focus away from the inputs (hours spent in physical classrooms) to the outcomes would change the perspective to a competency-based one, which is: “what can a student do, now that he/she has a law degree?” If this perspective guides the revision of the NCA benchmark (building on the work accomplished in the National Admissions Standards Project), the new benchmark will likely be more effective in serving as a useful reference for assessment. The revision activities could include:

- Identify the knowledge and skills required to succeed at the time of bar admission
- Describe performance indicators including context within which performance will occur

The “input” focused current version of the National Requirement may need to be retained temporarily for law program accreditation since not all Canadian post-secondary institutions have adopted outcome focused learning objectives. Law schools may be willing to collaborate with the FLSC to run a project that maps law school curricula against the National Requirement:

- to identify what common (core) competencies students graduate with. (Read more in recommendation 7 on this topic.)
- as a form of validation of the National Requirement (does it reflect current practice, does it appear to have any gaps?)
- the extent to which each law program currently meets the core competencies
- what can internationally-trained lawyers reasonably be required to study before licensure

Action 2.2 	Develop a competency-based benchmark for entry to practice	Timeframe <table border="1" data-bbox="1019 268 1380 331"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

The review identified that some law schools and law societies do use the NCP to inform their own initiatives. Once *Action 2.1 Develop a competency-based benchmark for entry to bar admissions* is implemented, it could be possible to reinvigorate the abandoned NCP initiative. At that time, the NCP, will require updating (any competency standard should be reviewed every 3-5 years). Building on the new benchmark for bar admissions, law societies could work together to transform it into a comprehensive competency framework including both the benchmark for bar admissions and for entry to practice. This consistency between the two stages would demonstrate a natural progression for NCA graduates towards bar admission.


5.3 Recommendation 3: Strengthen the current NCA assessment and marking

Action 3.1 	Develop/implement an NCA Quality Policy and Guideline	Timeframe <table border="1" data-bbox="1019 909 1380 972"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

NCA exams are high stakes exams, i.e. passing or failing has an important consequence for a candidate. The [Institute for Credentialing Excellence](#) provides detailed guides to assist regulatory bodies to develop appropriate policies. To begin the exploration, some of the following should be considered by the NCA for the current program:


- Do assessors and examiners have criteria to grade consistently?
- Does the NCA require that assessors consistently apply qualifications recognition criteria, policies and procedures to all applicants?
- Are the NCA assessors and markers qualified to conduct their work, do they need training?
- Does the NCA monitor the consistency and accuracy of decisions, and takes corrective actions as necessary, to safeguard the objectivity of its decisions?
- Do NCA exams measure what they intend to measure?

(Source: Registration Practices Assessment Guide: For Regulated Professions and Health Regulatory Colleges, March 2016; 6. Specific Duty - Assessment of Qualifications)

Action 3.2 	Assess for three NR skills not currently assessed	Timeframe <table border="1" data-bbox="1019 1696 1380 1759"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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The battery of NCA exams does not adequately assess candidates for competence in communications, legal writing and research. Exam markers may be tempted to make inferences to applicants' skill gaps based on their written exams, but the exams are not designed nor the markers trained to assess these skills.

The NCA should engage assessment experts (this may need to include language assessment experts) to work with practising lawyers and articling principals and check with law educators to identify the evidence required to prove that an NCA candidate is sufficiently competent in the three skills. If required, the description of the three skills should be revised to include performance indicators, i.e. specific descriptions of what competent behaviour looks like, based on which evidence can be collected and evaluated. Assessors must be trained in reviewing evidence and distinguishing the sufficient evidence from not yet sufficient evidence. NCA applicants must be informed what types of evidence are going to be accepted and how it is going to be evaluated.

Action 3.3 	Improve defensibility of NCA exams	Timeframe <table border="1"> <tr> <td data-bbox="1019 802 1144 865">S</td><td data-bbox="1144 802 1269 865">M</td><td data-bbox="1269 802 1395 865">L</td></tr> </table>	S	M	L
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The academic approach to preparing and grading exams, while widely accepted in the setting of a post-secondary education institution does not meet the criteria of high stakes exams in an occupational or regulatory context. In addition to the development of and adherence to a quality assurance policy for exams (Action 3.1), the following steps would, until a competency-based assessment battery is designed, address the major concerns with the current NCA exams:

- Revise syllabus using learning outcomes for each exam
- Adopt marking and grading criteria
- Engage markers and assessment experts in the process


Action 3.4 	Clarify recognition of professional legal experience in common law	Timeframe <table border="1"> <tr> <td data-bbox="1019 1344 1144 1407">S</td><td data-bbox="1144 1344 1269 1407">M</td><td data-bbox="1269 1344 1395 1407">L</td></tr> </table>	S	M	L
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Work experience is an important part of the qualification a mature NCA applicant brings to Canada. Currently the NCA Policies and Guidelines define professional legal experience as being licensed and having worked in a common law jurisdiction. The value for applicants from common law jurisdictions is described very clearly (i.e. work experience may be accepted in lieu of pre-law education or substantive legal knowledge, deficiencies in length of law degree program or academic performance in Core subjects for common law applicants.) For Canadian Civil law graduates, it is not so clear. There is a stated requirement for an excess of 10 years for work experience to be considered, but it is not clarified in lieu of what. For applicants from non-common law foreign jurisdictions, the Policies and Guidelines hint at a recognition of work experience depending on legal education, without any clarification. The candidate

survey pointed out that this lack of clarity, in an attempt to fill in the blanks, can create false expectations in candidates.

The policy requires more clarity, regarding the:

- scope of eligible licensed common law practice (what competencies are demonstrated, what functions are carried out)
- evidence required to substantiate work experience (currently the policy states that only Canadian Civil law graduates have to provide work samples and an Affidavit; what about those with common law experience?)
- the type of possible recognition in the NCA application process
- value of other work experience

Action 3.5 	Remove wait times between exam sessions for failed exams	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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The candidate survey raised two questions that speak to the length of the NCA process:

- why do candidates have to take so many separate exams?
- why does the process disallow candidates to retake a failed exam right away

Unless there is clear merit, exam scheduling should be organized to allow unsuccessful students to rewrite as soon as possible. The high number of exams is related to the academic model of testing; we discuss this in Recommendation 4.

5.4 Recommendation 4: Develop a competency-based NCA assessment system

Recommendation 3 above lays out the actions required to improve the current NCA exams. While this will likely suffice for now, we recommend that in the longer term, the FLSC considers developing a competency-based assessment battery. This is a major undertaking, to be conducted carefully over several years. If the FLSC decides to move ahead we would propose the following action steps.


Action 4.1 	Conduct a feasibility study, with cost/benefit analysis	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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A review should be conducted looking at the impact a complete overhaul of NCA assessment would have on the NCA, the FLSC, law societies, law schools and most importantly NCA candidates. It should produce a staged implementation plan.

Action 4.2	Develop consensus on which competencies must be tested and to what extent	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

		
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Probably, not every competency need be tested, for example if they are rarely used or are not so critical. Competencies may be combined for testing purposes. The result would be a testing strategy, often called an assessment blueprint.

Action 4.3 	Identify types of evidence suitable to demonstrate performance criteria	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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Contemporary approaches to assessment tend to focus on identifying the best methodology to assess a certain competency. Working from an approved and accurate competency profile, subject matter experts, (in this case practising lawyers) should be convened to make decisions on what form of evidence should be collected to prove that someone is competent. Evidence could include:

- Testimonial from former superiors or colleagues
- Authentic work samples (text, audio, video)
- Oral presentation
- Interview (in person or virtual)
- Objective structured examination, which requires the candidate demonstrates knowledge, skills, attitudes, judgement, good character etc.
- Knowledge examination via essay, multiple-choice questionnaire


Action 4.4 	Develop assessment tools	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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After deciding on the competencies and evidence required, the next step is to identify the best means of assembling that evidence. The process would include:

- Review existing assessment methodologies (eg Kaplan OSCE as in UK)
- Assemble a representative assessment committee
- Work with psychometric/assessment experts to develop a defensible set of tools

Action 4.5 	Train and qualify assessors	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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It is essential that the assessors are themselves trained, and ideally certified against a new assessor qualification. This in turn requires development of a set of competencies for assessors.

Action 4.6 	Conduct a pilot, evaluate, revise and finalize	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
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As can be seen, no longer would the NCA be an “exam factory” running conventional written exams, but a more structured assessment house, using a range of techniques. It would be wise therefore to proceed cautiously, introducing these new techniques progressively, and testing and evaluating at every stage.

5.5 Recommendation 5: Work with stakeholders to develop a menu of supports to meet diverse needs

Applicants, training providers and law societies agree that certain skills and knowledge gaps are not being addressed in the current system, and the surveys showed that the supports candidates need vary greatly. At the same time the gaps and needs are not necessarily confined to the NCA portion of the licensing process, which suggests the need for a holistic approach. A mix of flexible supports based on the most commonly reported gaps should therefore be better able to address the diverse needs of NCA applicants throughout their journey.

Any or all of the following should help to improve equitable outcomes for NCA applicants:

- Enable applicants to make informed decisions about applying to the NCA program or pursuing alternative careers
- Provide mechanisms to connect with the Canadian/local legal eco system (e.g. students, professionals, workplaces, organizations)
- Provide a means to diagnose and remedy language related issues
- Provide accessible solutions to remedy other knowledge and skills gaps

Action 5.1 	Identify successful and applicable supports from other professions	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			


A number of professions have developed flexible supports for internationally educated professionals seeking licensing in Canada. Practices include: pre-arrival services, mentoring, job shadowing, work placements, modular bridging programming. Explore content that can be adapted under licence to the legal context. Many bridging initiatives depend on public funding and few are financially sustainable (those with very large cohorts do better); collaboration of stakeholders already in the business of offering training appears critical to share fixed costs. Any bridging program development should include a business plan and sustainability review.

Action 5.2 	Offer a mentoring program	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

NCA applicants and graduates but also visible minorities and other equity seeking groups face barriers due to their limited network of professionals. This includes difficulties finding articling positions, lack of role models or fewer opportunities for professional exchange. Mentoring can have many benefits for mentees. It can:


- Provide a confidential environment to seek advice
- Help with the development of a much needed network
- Broaden skill sets and knowledge
- Improve self confidence
- Improve career developments and prospects
- Provide stability during times of change

For the mentor, it helps to improve management and leadership skills. Connect to an existing network (e.g. www.mentorcity.com) or build one using lessons learned from those that already exist.

Action 5.3 	Better understand current language gaps	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

The current policy on language appears not to consistently produce NCA graduates with sufficient language competencies. However clear evidence to decide on a path forward is not available. There are still too many questions. Firstly, where exactly are the gaps? Speaking, writing, listening or reading? If it is speaking, is it elocution or vocabulary or grammar? If it is writing, is it spelling or legal writing? Are the gaps general language or occupational language related? Is the IELTS level appropriate? Should the exempt applicants perhaps not be exempt? Is language a proxy for culture?

To ensure NCA candidates are treated fairly, and to avoid producing an expensive occupational language assessment before due diligence is done, the language issue needs to be better understood before any additional testing or training should be considered. We recommend that the NCA work with language experts to decide on a prudent and effective way forward.

Action 5.4 	Work with stakeholders to adapt, customize and develop accessible (on-line) gap training	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

At a minimum, this should include the following:

- Conduct a Training Needs Assessment to confirm the most common gaps.
- Base any training on the NCA benchmark.

- The NCA can connect with a number of stakeholders who have relevant expertise: law schools, bridging program providers from other professions, e-learning providers, current providers of NCA programming, cross cultural experts.

Action 5.5 	Develop a comprehensive web-based self-assessment	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

Canada attracts internationally trained legal professionals with a variety of education, work experience and cultural backgrounds. In particular, newcomer NCA applicants inherently lack a thorough understanding of how their knowledge, skills and attitudes compare with Canadian educated law graduates and lawyers. Canadians educated abroad are probably more culturally attuned but may lack Canadian law specifics. NCA applicants would benefit from getting a better understanding of the gaps in their skills and knowledge.

In general, the opportunity to self-evaluate and increase one's awareness of strengths and weaknesses is an essential step in professional development and lifelong learning. A web-based tool based on a set of competencies will assist potential NCA applicants to gauge their chances of becoming licensed and the magnitude of work potentially involved. It can also serve as a gap assessment, identifying areas of study that have been mostly neglected. Identifying potential gaps early (before admittance to bar admissions programs) is a key step in remedying some of the gaps widely identified by the survey. Letting newcomers take the lead by offering a self-assessment should help create more realistic expectations early on.



For the potential NCA applicants to receive assistance in career exploration, in particular with regard to alternative choices, it would be helpful to have access to assistance from an immigrant employment counsellor. They should be knowledgeable about the common law licensing process and able to discuss the outcomes of the self-assessments, in particular the issues and pathways to become a licensed lawyer. It may be helpful to start this by working with one or two organizations and evaluate its effectiveness.

5.6 Recommendation 6: Develop NCA data collection system

Any changes to the NCA program should be guided by and grounded in facts. This should include detailed data on success rates. The program review identified shortcomings in data collection, specifically, what is collected, how it is shared and how it is used.

A data collection system that is developed with the intent to monitor, evaluate and improve the NCA program will be fundamental to its ongoing improvement. It will equip the NCA with the insight needed to evolve in step with changes in demography, education and practice. Data collection with evaluation in mind will provide information on candidate needs, markers of success, gaps in candidate skills and knowledge, and promising practices to improve readiness for licensing.



Action 6.1		Timeframe			
	Mine existing data better	<table><tr><td>S</td><td>M</td><td>L</td></tr></table>	S	M	L
S	M	L			

The review identified valuable data literally “locked away” in file cabinets. The NCA has data that can shed light on candidate needs and markers of success at the CQ level (e.g., institution of education, number of years of experience, language proficiency) to a certain extent. Each law society also has data that they can access to better pinpoint actual deficiencies in NCA graduates compared to the Canadian trained, although much of the data will not be comparable across law societies. We recommend that NCA and each law society start with identifying the data that has already been collected. NCA and the societies can then discuss how to make the most of the data is already available.

Action 6.2		Timeframe			
	Reach consensus on data collection	<table><tr><td>S</td><td>M</td><td>L</td></tr></table>	S	M	L
S	M	L			

Currently, each law society has data collection systems in place that meet their individual objectives. The NCA should convene a working group of selected volunteers representing a cross-section of jurisdictions to identify a common set of goals, objectives and frequency for data collection that allows each stakeholder to easily integrate the “new system” into their existing practices.

Action 6.3		Timeframe			
	Identify the required resources and conduct a pilot	<table><tr><td>S</td><td>M</td><td>L</td></tr></table>	S	M	L
S	M	L			

Explore the most suitable and convenient way to collect, store and report on data and identify the resources needed (i.e. technology, human resources, coordination). Only if data collection is quick and easy to integrate into existing practices will such a system be sustainable and meet its objectives in the long term. A systemic initiative will likely require some fine tuning after a trial run. We suggest conducting a pilot implementation over one year to deliver a proof of concept before too many resources are expended. Pilot sites could include some of the larger and smaller law societies.

5.7 Recommendation 7: Strengthen governance and oversight

Generally the governance and operations of the NCA appear well regulated and function smoothly. Based on the program review, we conclude that there are opportunities to strengthen the Committee, and give Council more confidence in exercising its oversight responsibilities. This would attach the NCA more firmly within the FLSC structure, allow Committee and Council members more opportunity to consider any issues, recognize the ultimate responsibility of the law societies, and help set concerns at rest.

Action 7.1 	Strengthen Committee membership	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

Given the increased volume and variety of NCA candidates, and the increased interest of governments and agencies, we propose to formalize the expertise of NCA committee members. Historically, the NCA committee has included members with expertise in the subject matter of qualifications and recognitions. The Committee would be strengthened by the appointment of two additional members with specific senior level experience in foreign credential recognition. At least one of these should come from outside the law community.


Action 7.2 	Hold at least one face to face meeting each year	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

Face to face meetings can be difficult given time, cost and geography. However without them the committee members will lack in personal communications, understanding of issues and mutual trust. We recommend that the Committee conduct one full physical meeting per year.

Action 7.3 	Increase reporting and presence of NCA at the Council table	Timeframe <table border="1"> <tr> <td>S</td><td>M</td><td>L</td></tr> </table>	S	M	L
S	M	L			

The short regular reports to Council are ideal for routine reporting. A more substantial annual report, with more detail, and explanation and discussion of key issues will ensure that Council can fully exercise its oversight responsibilities.

The Committee Chair is generally a Council Member on initial appointment but not necessarily thereafter. Whilst he/she can be called in if there are specific issues, this is not common. We think it would be desirable if the NCA Chair attended one Council per year, at the time of this annual report to allow Council to consider and discuss in more depth.

Action 7.4 	Council to assume responsibility for NCA policy	<table> <tr> <th colspan="3" data-bbox="1010 571 1144 598">Timeframe</th></tr> <tr> <td data-bbox="1010 598 1144 655">S</td><td data-bbox="1144 598 1266 655">M</td><td data-bbox="1266 598 1393 655">L</td></tr> </table>	Timeframe			S	M	L
Timeframe								
S	M	L						

Specifically, Council should consciously approve NCA Policy.

6. Conclusions

Our recommendations provide a gradual path for improvement to the current NCA process towards a fair, objective, transparent and consistent foreign credential recognition program. Such a program is based on a competency based framework that facilitates mobility between jurisdictions and (mutual) recognition of qualifications. These recommendations will hold different implications for the various stakeholders in the legal profession.

We note that the FLSC and the NCA are part of a complex system that supports the legal profession. Other players in this system include law schools, law societies, providers of legal training and law firms that accept articling students. All of these have a role in the formative education and training of a lawyer. Each of these have different perspectives on what is required and is most appropriate for the profession, depending on their mandates.

As well, we note that both the FLSC and the NCA were created to present a national position and at the same time to further the goals of each individual law society. This remains a delicate task and a tall order to say the least. Most federated bodies face similar challenges in Canada, where maintaining provincial and territorial autonomy and standards are as important as enabling labour mobility and acting on mutually beneficial objectives. If the recommendations presented in this NCA Program Review Report are to come to fruition, the reality of this continuous tug of war needs to be acknowledged and built into any carefully crafted implementation plan.

We address here several questions that may present themselves to stakeholders:

- *Will the recommended shift of the NCA process from assessing the equivalency of academic credentials to an evaluation of competencies create an asymmetry between the basis on which NCA applicants and graduates of Canadian law schools are determined to be eligible to commence articles and register in bar admission courses? If so, would that asymmetry be fair and coherent to graduates of Canadian law schools? If not, how would it be addressed, resolved, avoided, etc.?*

Our recommendations actually promote greater fairness and symmetry over the current system. Our program review showed that NCA applicants are being assessed for some skills that Canadian students have developed through attending law school, although these skills may not be explicitly taught in the education and training provided in law schools. Certainly, current assessments of Canadian students do not always formally assess many of these competencies since many of them are implicitly transmitted through a Canadian law education. At the same time, NCA candidates are not being assessed for certain skills specified in the current NR.

Our recommendations regarding the revision of the NR make explicit the competencies that Canadian students develop in law school. (The competency-based approach also has eventual implications for

adoption of learning outcomes in law schools although this is beyond the scope of our program review.) Explicit description of the competencies acquired during law school that are important to the practice of law (through a revised NR) will be the basis of the assessment of NCA candidates. Such an approach provides the conditions for symmetry and fairness in that assessment of Canadian students and NCA candidates both make reference to the same standard.

If the purpose of the NCA is to screen internationally-trained candidates for eventual law practice, what is key to symmetry and fairness is what is important to the practice of law at this formative stage from the perspective of the regulators. In this respect, we believe that our recommendations provide the conditions for symmetry and fairness.

- *What are the implications for the recommended shift to assessing competency for*
 - a) what is taught (or acquired) in Canadian law schools, how it is taught (or acquired) and how it is evaluated;*
 - b) what is taught (or acquired), how it is taught (or acquired) and evaluated in articles and bar admission courses; and*
 - c) the role of NCA (or FLSC) relative to curriculum and learning objectives across the spectrum, i.e. in law schools, in articles and in bar admission courses?*

One recurring finding throughout our program review was that NCA is part of a complex system and that change to NCA process will have implications for change throughout the system. Many stakeholders consulted during our review were vocal about the need to recognize the importance of skills (and not just knowledge) to law practice. As an example, the Canadian Association of Law Teachers is organizing a conference in the summer of 2017 on "Educating the Whole Lawyer" (see is <http://accle.ca/wp-content/uploads/FINAL-CALT-ACCLE-Eng.pdf>), which is inspired by a recent American study called "Foundations for Practice" (available at <http://iaals.du.edu/foundations>) .

As noted earlier, integration of the NR and NCP in a competency based framework will address what should be taught and acquired at each stage of the formative education and training of a lawyer. The framework will make reference to common competencies important to law practice. These will remain largely the same at all levels in the profession (although the levels of required proficiency will change), from graduation and entry to articling/experiential learning through to bar admissions and entry to practice, and later on, in progression in practice experience.

The implications of a competency based approach for law schools , law societies and providers of legal education are therefore profound and far reaching. In some cases, it may mean a fundamental change in approach which may not be accepted without much debate and deliberation, and will not be easily or quickly accomplished. We believe that adoption of this approach will bring many benefits to the legal profession by integrating the different stages in the formative education and training and the professional development of lawyers in a clear and transparent way.

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Appendix A. Documents reviewed

Common Law Degree Implementation Committee Final Report. Federation of Law Societies of Canada. 2011.

Memorandum to NCA Committee Members. Draft June 2, 2006. Dean Brent Cotter, Q.C. and Michael W. Milani, Q.C (Provided by Deborah Wolfe, Email from December 2, 2016)

National Committee on Accreditation Budget and Operational Submissions to the Executive Committee of the Federation of Law Societies of Canada. 2005-2006

National Committee on Accreditation Policies and Guidelines, revised January 1, 2015

National Entry to Practice Competency Profile for Lawyers and Quebec Notaries. National Admission Standards Project, Federation of Law Societies of Canada. 2012.

National Requirement. Federation of Law Societies of Canada. Updated in 2011.

Report to the Admissions and Equity Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education. Gavin MacKenzie. June 3, 1997. (Provided by Deborah Wolfe, Email from December 2, 2016)

Review Approach. Western Management Consultants. 2008.

Review of the Accreditation Process Conducted by the National Committee on Accreditation (Accreditation Consultation Report). Accreditation Review Committee, Chair: Brian J. Wallace, Q.C. 1998.

Task Force of the Canadian Common Law Degree Final Report. Federation of Law Societies of Canada. 2009.

Web Content on <http://flsc.ca/national-committee-on-accreditation-nca/> and sub-pages

<ul style="list-style-type: none"> • About the NCA • NCA Assessment Process • Meeting the Assigned Requirements • Getting a Certificate of Qualification • NCA Exam Rules & Information • NCA Exam Review • NCA Schedules 	<ul style="list-style-type: none"> • NCA Resources • Assistance for NCA Candidates (Law schools) • Advisories • Current NCA Policies <ul style="list-style-type: none"> ○ NCA Forms ○ FAQs ○ NCA Schedules ○ Syllabi ○ Practice Exams • What is the NCA? • How to Apply for an Assessment • How We Assess Your File
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Appendix B.

Stakeholders interviewed

NCA Committee Members

Alan Treleaven (Director, Education and Practice, LSBC)

Malcolm Mercer (Bencher for LSUC)

NCA Program Review Advisory Group

Diana Miles (Executive Director, Organizational Strategy and Professional Competence, LSUC)
(Priya Bhatia, Manager, Licensing and Accreditation, LSUC also took part in the interview)

Law Societies

Darrel Pink (CEO, NSBS)

Don Thompson (CEO, LSA)

Law Schools

Camille Cameron (Member NCA, Dean of Schulich School of Law at Dalhousie University, Chair of Council of Canadian Law Deans)

Lorne Sossin (Dean of Osgoode Hall Law School and former member of Approval Committee)

Examiner

Craig Forcese (Professor of Law at University of Ottawa, member of NCA Exam Policy Committee)

Other

Nuzhat Jaffrey (Executive Director) and Angelika Neunhofen (Policy and Program Advisor), Office of the Fairness Commissioner

Andrew Staples (Director, Policy and Intergovernmental Relations, Skills and Employment Branch, Employment and Social Development Canada (ESDC))



Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Your Experience in Qualifying to Practise Common Law in Canada

Section 1: Please tell us about yourself

1. Please indicate where you are in the process of qualifying to practise common law in Canada? Have you:

- ☐ Decided not to proceed with the NCA Certificate of Qualification
- ☐ Not yet started assigned subjects for NCA Certificate of Qualification
- ☐ Not yet completed assigned subjects for the NCA Certificate of Qualification
- ☐ Been awarded the NCA Certificate of Qualification
- ☐ Decided not to apply for Provincial/Territorial Law Society bar admissions
- ☐ Not yet completed Provincial/Territorial Law Society bar admissions
- ☐ Been registered to practise by a Provincial/Territorial Law Society

2. Please describe your employment situation. Are you: (please check all that apply)

- ☐ Unemployed
- ☐ In full- or part-time training related to law
- ☐ In full- or part-time training unrelated to law
- ☐ Employed part-time
- ☐ Employed full-time
- ☐ In work unrelated to law
- ☐ In work related to law
- ☐ Following your desired career path
- ☐ Practising as a qualified lawyer

3. Have you considered careers other than the practice of common law in Canada, to which you can apply your previous legal training and background? Which and why?

4. In which country did you receive your primary and secondary education?

5. In which country did you receive your initial law education?

6. What language did you use to study law before applying to the NCA?

7. Did you study law in your first language (mother tongue)?

8. Have you been initially educated in (check all that apply)

- ☐ common law?
- ☐ civil law?
- ☐ mixed law?

9. Have you practiced common law outside of Canada? If yes, for how long?

Section 2: Please tell us about your experience with the NCA and/or the bar admissions process

10. Generally, what help and support did you receive when preparing to write the NCA exams or bar admissions? (e.g. info, networking, mentoring, coaching, etc.) [Please note: training will be covered in the next question]

11. What Canadian training have you received specifically aimed at internationally-educated candidates?

11.1. completing the program prescribed by the NCA?

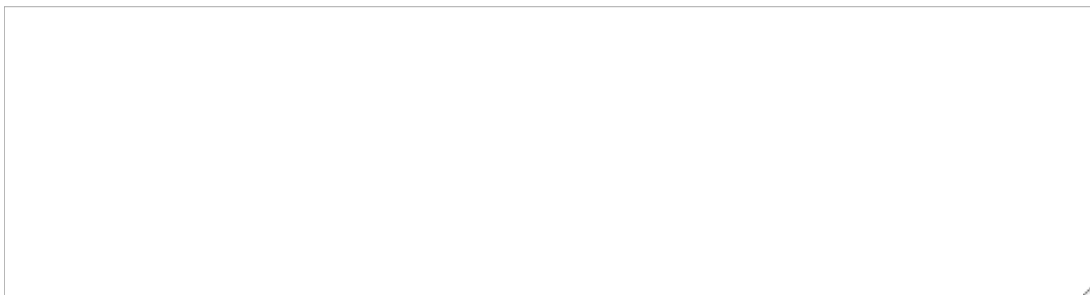
11.2. completing the bar admissions?

12. How well do you feel you have been prepared to practice as a lawyer in common law in Canada?

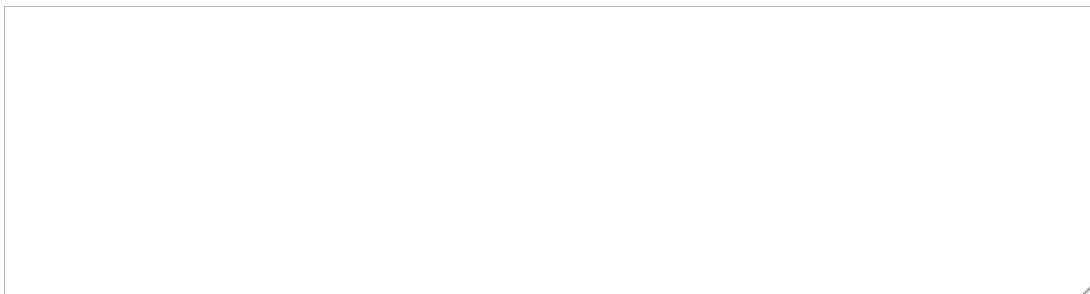
- ☐ Not well prepared

- ☐ Somewhat well prepared
- ☐ Mostly well prepared
- ☐ Definitely well prepared
- ☐ Not sure

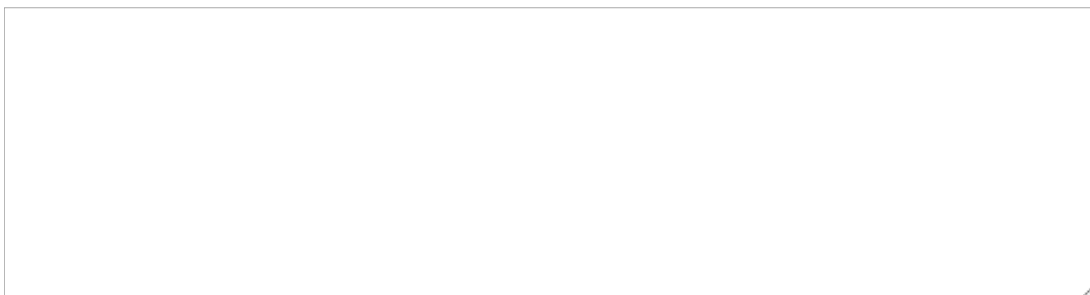
13. If you are currently working in a law-related field, have you experienced any issues for which you were not well prepared? If yes, please describe these issues.



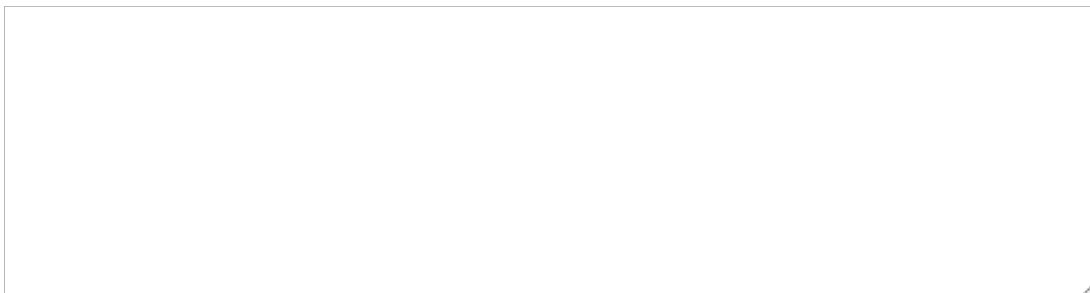
14. Please tell us if and how your preparation to practise common law in Canada could have been improved.



15. Generally, reflecting on your experience, what worked well?



16. Generally, reflecting on your experience, what was least helpful?



17. Overall, how satisfied are you with the process of qualifying to practise common law in Canada?

- ☐ Not satisfied
- ☐ Somewhat satisfied
- ☐ Mostly satisfied
- ☐ Very satisfied

☐ Not sure

18. Please provide any additional information or suggestions for improvements/changes below.

19. Would you be available to clarify any answers via email?

☐ Yes

☐ No

If yes, please provide your email address:

Submit



Federation of Law Societies of Canada
Fédération des ordres professionnels de juristes du Canada

Appendix C2

Votre expérience de qualification pour le droit de pratique de la Common Law au Canada

Section 1: Merci de nous parler de vous.

1. Avez-vous :

- ☐ décidé de ne pas suivre la démarche nécessaire pour obtenir un certificat de compétence du CNE?
- ☐ pas encore commencé à suivre les cours dans les matières assignées en vue d'obtenir le certificat de compétence du CNE?
- ☐ pas encore terminé les cours dans les matières assignées en vue d'obtenir le certificat de compétence du CNE?
- ☐ obtenu le certificat de compétence du CNE?
- ☐ décidé de ne pas présenter une demande d'admission au programme de formation professionnelle de l'ordre professionnel de juristes d'une province / d'un territoire?
- ☐ pas encore terminé le programme de formation professionnelle de l'ordre professionnel de juristes d'une province / d'un territoire?
- ☐ été autorisé à exercer le droit par un ordre professionnel de juristes d'une province / d'un territoire?

2. Merci de décrire votre situation d'emploi. Est-ce que : (Veuillez cocher toutes les réponses qui s'appliquent.)

- ☐ vous êtes sans emploi?
- ☐ vous faites une formation à temps plein ou à temps partiel qui se rapporte au droit?
- ☐ vous faites une formation à temps plein ou à temps partiel sans rapport avec le droit?
- ☐ vous avez un emploi à temps partiel?
- ☐ vous avez un emploi à temps plein?
- ☐ vous avez un emploi sans rapport avec le droit?
- ☐ vous avez un emploi en lien avec le droit?
- ☐ vous suivez le parcours de carrière que vous avez choisi?
- ☐ vous pratiquez en tant qu'avocat qualifié ?

3. Avez-vous déjà considéré faire carrière dans un autre domaine que la pratique de la Common Law dans laquelle vous pourriez utiliser votre expérience et votre formation préalable en droit ? Laquelle et pourquoi ?

4. Dans quel pays avez-vous fait vos études primaires et secondaires?

5. Dans quel pays avez-vous fait vos premières études en droit?

6. Dans quelle langue avez-vous étudié le droit avant de présenter une demande au CNE?

7. Avez-vous étudié le droit dans votre langue maternelle?

8. Au départ, avez-vous fait vos études en :

- ☐ common law?
☐ droit civil?
☐ mixte ?

9. Avez-vous pratiqué la Common Law à l'extérieur du Canada? Si oui, pendant combien de temps ?

Section 2: Merci de nous parler de votre expérience de préparation aux examens du NCE ou au processus d'admission au barreau

10. De façon générale, quelle aide et quel soutien avez-vous reçus lorsque vous vous êtes préparé à passer les examens du CNE ou du programme de formation professionnelle? (Ex. informations, réseautage, mentorat, coaching, etc.) Prendre note que la formation sera traitée à la question suivante.

11. Quelle formation avez-vous suivie au Canada à l'intention des candidats formés à l'étranger

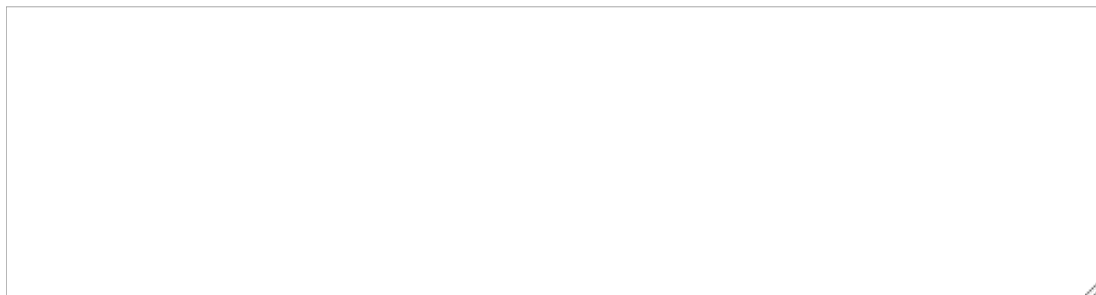
11.1. afin de compléter le programme prescrit par le NCE

11.2. afin de compléter le processus d'admission au barreau

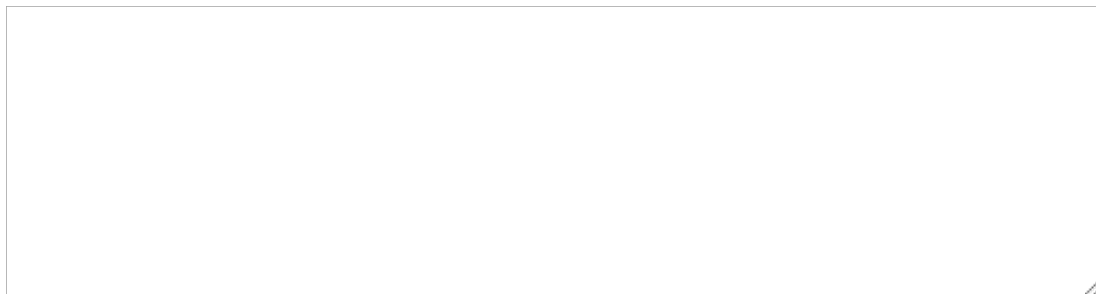
12. Dans quelle mesure avez-vous été préparé afin de pratiquer en tant qu'avocat en Common Law au Canada?

- ☐ mal préparer
- ☐ quelque peu préparer
- ☐ assez bien préparer
- ☐ très bien préparer
- ☐ Incertain

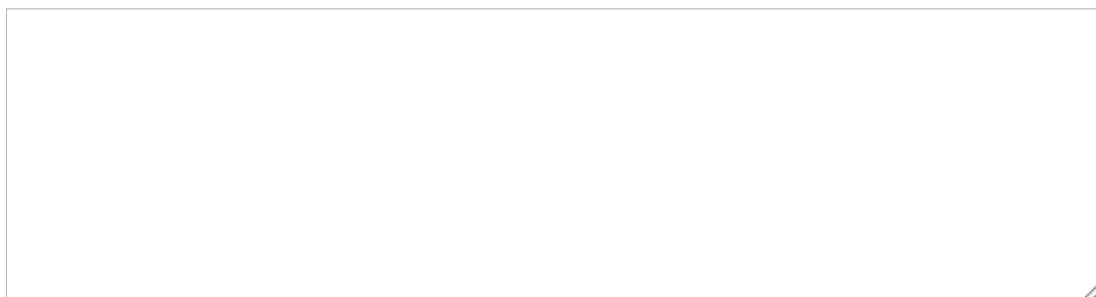
13. Si vous travaillez présentement dans un domaine relié au droit, avez-vous rencontré des problématiques pour lesquelles vous n'étiez pas bien préparer ? Si oui, merci de les décrire.



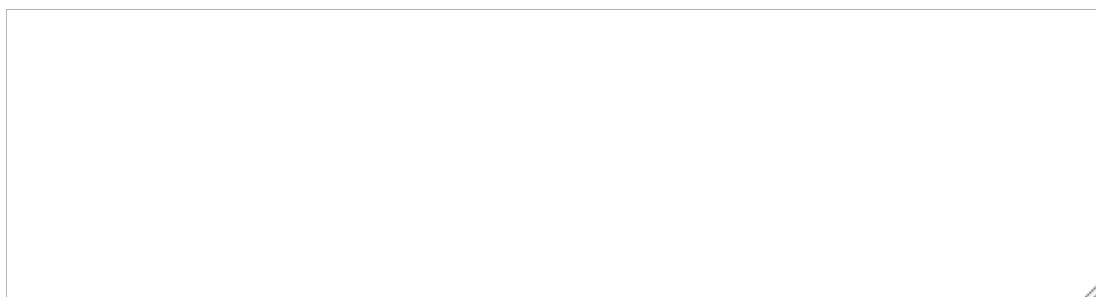
14. Selon vous, comment votre préparation à l'exercice du droit au Canada aurait pu être améliorée.



15. De façon générale, en réfléchissant à votre expérience personnelle, qu'est-ce qui a bien fonctionné ?



16. De façon générale, en réfléchissant à votre expérience personnelle, qu'est-ce qui a été le moins utile ?

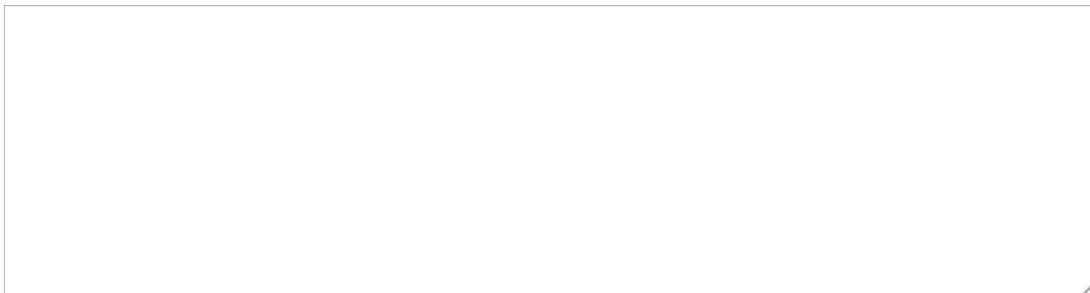


17. Dans l'ensemble, à quel point êtes-vous satisfait du processus du CNE?

- ☐ Insatisfait
- ☐ Un peu satisfait

- ☐ Plutôt satisfait
☐ Très satisfait
☐ Incertain

18. Merci de nous transmettre vos commentaires ou suggestions afin d'améliorer ou de changer le processus



19. Seriez-vous disponible pour clarifier une ou plusieurs de vos réponses par courriel s'il y a lieu?

- ☐ Oui
☐ Non

Si oui, veuillez indiquer adresse courriel :

Soumettre

Appendix C3: Message to go with Surveys

Subject: Share your views on the training and preparation for NCA testing

The Federation of Law Societies of Canada is conducting a comprehensive program review of the National Committee on Accreditation (NCA). As a *student/education and training provider/law society* you are an important stakeholder and we hope you can complete this xx min survey (insert link here)

Please complete the survey by January 25th, 2017.

Thank you in advance for your participation in the review process!

FLSC signature

French

Message accompagnant les sondages

Objet : Exprimez votre opinion sur la formation et la préparation en vue des examens du CNE

La Fédération des ordres professionnels de juristes du Canada procède actuellement à un examen exhaustif du programme du Comité national sur les équivalences des diplômes de droit (CNE). À titre *d'étudiant / de fournisseur de services d'éducation et de formation / d'ordre professionnel de juristes*, vous jouez un rôle important et nous espérons que vous pourrez prendre xx minutes pour répondre à ce sondage (insérer le lien ici).

Veuillez répondre au sondage au plus tard le 25 janvier 2017.

Nous vous remercions à l'avance de votre participation au processus d'examen!

Signature de la Fédération



Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Appendix D1

Preparing NCA Candidates and Graduates (i.e. internationally-educated lawyers, law graduates)

Which of the following do you represent?

- ☐ Education / training provider
- ☐ Provincial or territorial law society

1. What was the total number of your students? Please provide a number that includes those registered in all courses and programs (degree, professional development, training etc.) for both Canadian- and internationally-educated in each of the last 3 years.

2015-2016

2014-2015

2013-2014

2. How many internationally-educated lawyers, law graduates or law students took your courses and programs in each of the last 3 years? (please enter a number)

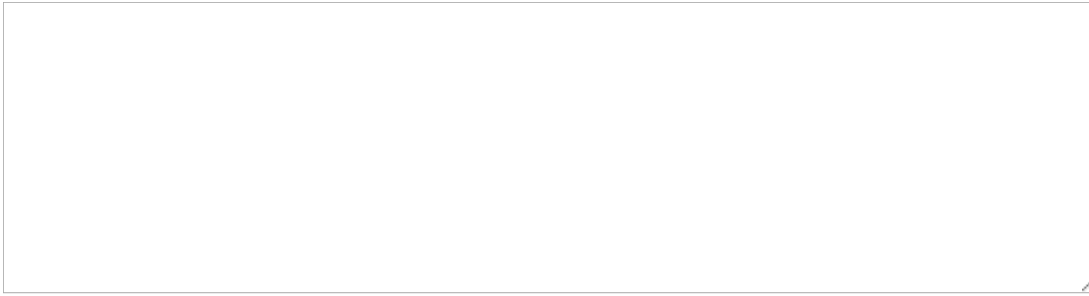
2015-2016

2014-2015

2013-2014

3. What training do you provide specifically aimed at:

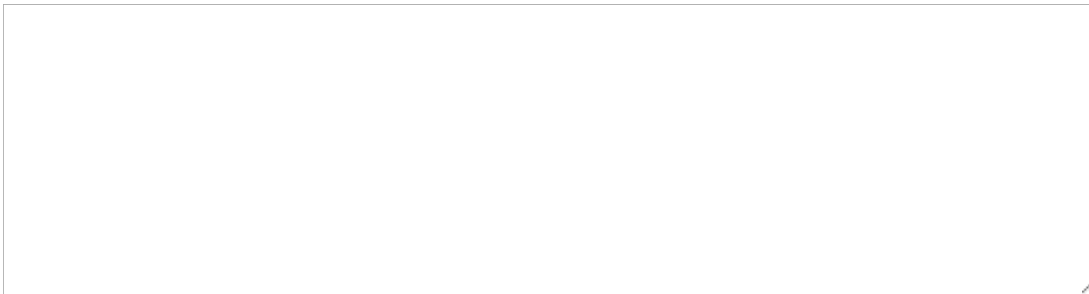
3.1. NCA candidates working towards a Certificate of Qualification?



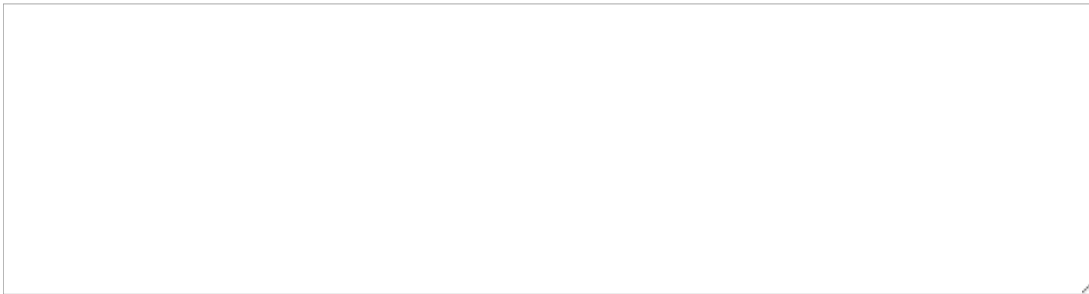
3.2. NCA graduates, who hold a Certificate of Qualification and are preparing for bar admissions?



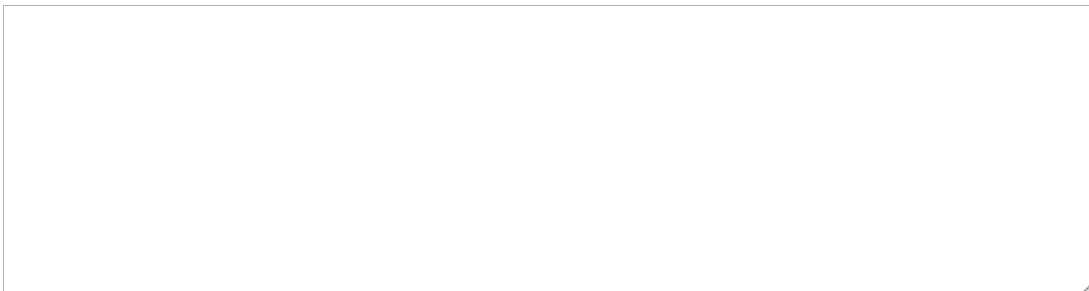
4. Which courses and programs receive the most registrations from NCA candidates and/or graduates?



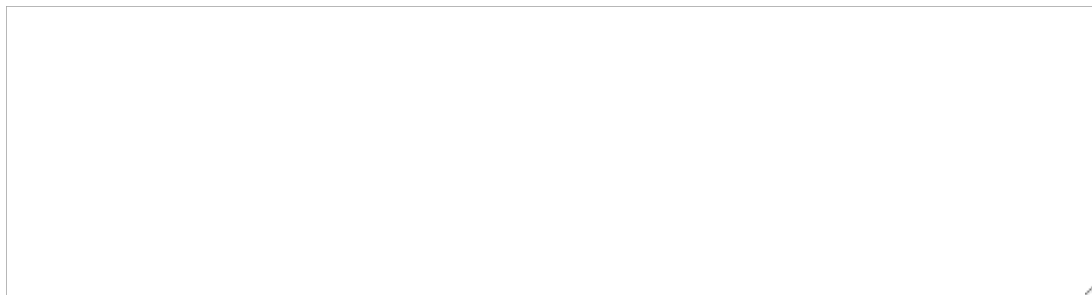
5. What shortages in knowledge or skills do you observe specifically in NCA candidates and/or graduates?



6. Which of those observed shortages do you NOT currently address in your courses and programs?



7. Please list the learning outcomes for each of the training courses attended by NCA candidates and/or graduates?



7.1. Please provide a link to a relevant website/s, as available.

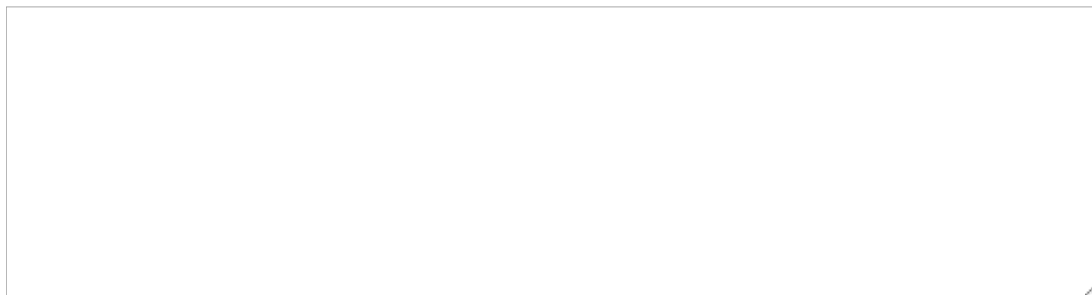
8. What are the usual ways of delivering this training? (please check all that apply)

- ☐ Face to face
- ☐ Online
- ☐ Other distance-learning
- ☐ Blended

9. What are the assessment/evaluation procedures applied in these courses and programs? (please check all that apply)

- ☐ Online
- ☐ In person
- ☐ Essay type exam
- ☐ Multiple choice type exam
- ☐ Oral exam
- ☐ Project work
- ☐ Certificate of attendance
- ☐ None
- ☐ Other (please specify)

10. In your opinion, what form of training and evaluation works best?



11. How long are the shortest course and longest program you have described above? Please provide the total number of contact learning hours for each below.

11.1. Total contact learning hours for shortest course

11.2. Total contact learning hours for longest program

12. How many NCA candidates and/or graduates that take your courses or programs are currently: (please enter a percentage)

Unemployed

In work unrelated to law

In work related to law

Following their desired career path

Don't know

13. Do you provide any other forms of pre- and post-arrival support to internationally-educated lawyers, law graduates or law students?

14. Please comment on the strengths, weaknesses, issues, trends and opportunities associated with existing courses and programs for internationally-educated lawyers and law graduates.

15. What improvements or changes would you suggest?

16. Would you be available to clarify any answers via email?

☐ Yes

☐ No

If yes, please provide your email address:

Submit



Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Appendix D2

La préparation des candidats du CNE et des diplômés (i.e des avocats formés à l'étranger et des diplômés en droit)

Quel type d'organisation représentez-vous ?

- ☐ un fournisseur de service d'éducation ou de formation ?
- ☐ un ordre professionnel de juristes d'une province ou d'un territoire ?

1. Quel est votre nombre total d'étudiants ? Merci de fournir un chiffre incluant les étudiants inscrits dans tous vos cours et vos programmes (cycles, développement professionnel, formation, etc.) à la fois pour les étudiants nés au Canada et les étudiants en provenance de l'extérieur pour chacune des trois dernières années

2015-2016

2014-2015

2013-2014

2. Combien d'avocats formés à l'étranger, de diplômés ou d'étudiants en droit ont participé à vos cours et programmes au cours des trois dernières années ? (merci de nous indiquer un chiffre)

2015-2016

2014-2015

2013-2014

3. Quelle formation donnez-vous spécifiquement pour:

3.1. Les candidats du CNE visant l'obtention du Certificat de Qualification ?

3.2. Les diplômés du CNE qui ont obtenu leur Certificat de Qualification et qui préparent leur admission au barreau ?

4. Quels sont les cours et les programmes pour lesquels vous avez le plus de demandes de la part des candidats du CNE et/ou des diplômés ?

5. Quelles sont les principales carences que vous observez dans les connaissances et les compétences spécifiquement chez les candidats du CNE et/ou des diplômés ?

6. Quelles sont parmi ces carences celles qui ne font pas l'objet d'une formation dans vos cours ou programmes ?

7. Merci de faire la liste des résultats d'apprentissage pour chacun des cours à l'intention des candidats du CNE et/ou des diplômés

7.1. Merci de nous fournir un lien vers un ou des sites Web pertinents, si disponible.

8. Quel est le mode de formation habituel ? (indiquez tous ceux qui s'appliquent)

- ☐ en présence
- ☐ en ligne
- ☐ autre forme de formation à distance
- ☐ formation mixte

9. Quel est le mode d'évaluation de vos cours ou programmes? (indiquez tous ceux qui s'appliquent).

- ☐ en ligne
- ☐ en personne
- ☐ essai
- ☐ examen à choix multiples
- ☐ examen oral
- ☐ projet
- ☐ attestation de présence
- ☐ aucun
- ☐ Autres (Veuillez préciser.)

10. Selon vous, quel mode de formation et d'évaluation fonctionne le mieux ?

11. Combien de temps dure le programme le plus court et le plus long que vous avez décrit ci-dessus? Veuillez fournir le nombre total d'heures en présence d'un professeur.

11.1. Nombre total d'heures en présence pour le programme le plus court

11.2. Nombre d'heures en présence pour le programme le plus long

12. Combien de candidats du CNE et/ou diplômés participants à vos cours ou programmes sont présentement :

sans emploi?

dans un emploi non relié au droit

dans un emploi relié au droit

en cheminement de la carrière de leur choix

je ne sais pas

13. Fournissez-vous d'autres formes de soutien pré et post arrivé aux avocats formés l'étranger, aux diplômés ou aux étudiants en droit?

14. Veuillez commenter les points forts, les faiblesses, les enjeux ou les tendances des cours et des programmes pour les avocats formés à l'étranger et les diplômés en droit.

15. Quelles améliorations pourriez-vous suggérer ?

16. Seriez-vous disponible afin de clarifier certaines réponses par courriel ?

- ☐ Oui
☐ Non

Si oui, merci de nous fournir votre adresse de courriel

Soumettre

Appendix E. Websites and documents for peer reviews

Quebec

- <http://www.conseiller-juridique.ca/difference-notaire-avocat>
- <http://www.canlaw.com/notary-public/quebec-notaries-are-like-lawyers.html>

UK

- www.barstandardsboard.org.uk
- www.sra.org.uk

Australia

- <http://www.lpab.justice.nsw.gov.au/>
- <http://www.courts.act.gov.au>
- <http://www.supremecourt.nt.gov.au>
- <https://www.lawsocietysa.asn.au>
- <http://www.lawadmissions.vic.gov.au>
- <https://www.lpbwa.org.au>
- <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3412.0/>
- <http://www.austbar.asn.au/becoming-a-lawyer-in-australia>
- <http://www.lawcouncil.asn.au>

Accounting

- www.cpacanada.ca
-

Interviews

Quebec

- Me Anne-Marie Pierrot, Secretary of the Equivalence Committee of the Barreau du Québec

UK

- Joanne Dixon, Authorisations Manager, Bar Standards Board (for England & Wales)
- Pat Mulvihill, Policy Officer - Quality and Standards, Solicitors Regulation Authority

Australia

- Christopher Banks, Executive Officer and Change & Client Relationship Manager, Legal Profession Admission Board of NSW

Accounting

- Jylan Khalil, Director Evaluations and International Assessment, CPA Canada

Glossary of terms

Assessment

The identification and review of learning, credentials, and other forms of qualifications to determine admission into programs of study or for access to regulated and non-regulated occupations. Assessment may include testing, examination, or other prescribed activities. (CMEC)

Criterion referenced assessment

Criteria are descriptions of elements of a candidate performance or indicators of the domains of learning tasks used to define and delimit expectations of what the candidates must exhibit at the completion of the learning task.

Competency

A demonstrated ability to apply knowledge or skills, and where relevant, demonstrated personal attributes, as defined by, or that meet or exceed, a standard of performance. (CMEC)

Evaluation

1. The attempt to determine the extent to which educational objectives have been attained.
2. The process of examining and passing a judgment on the appropriateness or level of quality or standards (CMEC)

(Evaluation is not carried out on individuals, it is carried out on courses and programs – CamProf)

Formative assessment

Activities of assessment that are directed at supporting, encouraging, motivating and enhancing learning are formative assessment.

Frames (or points) of reference

A frame of reference is required to make judgments about candidates' learning achievements demonstrated in performances or learning products. Transparent assessment requires public and explicit disclosure of frames of reference to be used at the time of assigning the assessment task.

There are four distinct types of frames of reference and often more than one is used. They are:

- Standards referenced: in which performance is assessed against the exhibition of a set of predetermined qualities of criteria or elements
- Criterion referenced: in which performance is assessed against the exhibition of a set of predetermined elements
- Norm referenced: in which the level of performance is set post hoc by the performance of the group
- Ideographic: in which achievement is determined by comparing each candidate's final performance with earlier performances to determine progress, or change

Informal Learning

1. Learning that takes place through life and work experiences and derives from activities external to a structured learning context.
2. Unstructured learning within a structured learning environment. (CMEC)

Non-formal learning

Learning acquired in structured programs outside formal educational institutions but that does not usually lead to an officially recognized academic credential. (CMEC)

Self-assessment

Self-assessment involves students making judgments about one's own learning: both their process of learning and its outcomes. To be effective self-assessment requires the criteria and standards to be applied to the learning outputs to be communicated clearly to candidates, so that they can make informed judgments about their own progress. It does not have to include self-grading.

Standards-based assessment

Standards based assessment will include aspects of criterion based assessment whereby specified qualities of performance in relation to specified criteria are used to assess candidates' achievement. The challenge for assessment task designers and assessors is to identify and articulate the various levels of quality in performance that is associated with a grade and communicate that to candidates. Standards of performance, however, are often tacit expectations and constructs of assessors generated from their years of experience at teaching and assessing. It is unfair to candidates if expected standards are not clearly explained as they will not know what they must demonstrate to achieve a high standard of learning achievement and will not be able to self-assess.

Summative assessment

Summative assessment is for the record and provides a measure and record of what candidates learning has been achieved to:

- direct candidates access to further learning;
- credential candidates for degrees and professional practice; and
- demonstrate that standards are appropriate (accountability)

Tests

Tests are used during a unit to determine candidate mastery or understanding of aspects of the unit objectives. They are assessment activities, which are carried out under examination-like arrangements, but occur during normal semester time, not the official examination period. Tests can perform a useful formative learning function for candidates as well as a summative function.

Learning outcomes

Learning outcomes are statements of what a learner is expected to know, understand and/or be able to demonstrate at the end of a period of learning. They are explicit statements about the outcomes of learning – the results of learning. They are usually defined in terms of a mixture of knowledge, skills, abilities, attitudes and understanding that an individual will attain as a result of his or her successful engagement in a particular set of higher education experiences.

(in practical terms learning objectives and learning outcomes should be the same – CamProf)

PLAR Prior Learning Assessment and Recognition

A process to assess and recognize all learning from all sources. (Some jurisdictions define PLAR more narrowly, for non-formal and informal learning contexts only.) (CMEC)

Moderation

Moderation ensures parity in assessment focusing on two assessment functions: (a) assessment design and (b) grading outcomes.

(a) The role of assessment design moderation is to ensure that

- (1) tasks are aligned to the Course and Unit Objectives;
- (2) stated learning outcomes satisfy academic discipline or professional community standards; and
- (3) the workload involved in the assessment design is appropriate for the unit weighting.

(b) Moderation of the grading process and outcomes is intended to ensure

- (1) consistency across multiple markers and
- (2) that the grades attributed to candidates products and performances reflect the appropriate standards and satisfy institutional, national and international standards of academic discipline or professional community.

Unless otherwise stated, definitions have been sourced from the Guide to Implementation of Assessment of Policies and Procedures; Macquarie University 2008.