

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

National Requirement Review Committee

Final Report

June 2017

Introduction

1. The National Requirement Review Committee (“NRRC” or the “Committee”) was established by the Council of the Federation of Law societies of Canada (“Federation”) with a two-pronged mandate: to consider whether a non-discrimination provision should be added to the National Requirement (the standard that graduates of Canadian common law programs must meet to be eligible for entry to law society bar admission programs), and to conduct an initial review of the National Requirement. A copy of the Terms of Reference of the Committee is attached as Appendix “1” to this report.
2. The NRRC began its work in May 2015. Consistent with the directions of the Council, the Committee initially prioritized the first aspect of its mandate, concentrating its efforts on the non-discrimination issue. In October 2016, however, the Committee was asked to suspend work on the non-discrimination issue in view of the ongoing litigation between the law societies in Ontario and British Columbia and TWU. Since then the Committee has focused on completing its review of the National Requirement and is now ready to provide its final report on this work.

Background

3. The National Requirement was adopted by the Council of the Federation in 2009 and was approved by Canada’s law societies in 2010. Developed by the Task Force on the Common Law Degree (“Task Force”),¹ the National Requirement specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. It applies to both new and existing law school programs and to internationally trained candidates whose qualifications are assessed by the National Committee on Accreditation (“NCA”).
4. To facilitate the development of a transparent and flexible process that would effectively implement the National Requirement, the Common Law Degree Implementation Committee (“Implementation Committee”) was established in 2010. It completed its report in 2011. The recommendations of the Implementation Committee led to some refinement of the National Requirement and to the development of a process for assessing law school compliance with the national standard. A copy of the National Requirement as amended in 2011 is attached as Appendix “B” to this report.
5. In 2012 the Council established the Canadian Common Law Program Approval Committee (“Approval Committee”) with a mandate to assess whether law school programs meet the National Requirement. Although the National Requirement did not come into force until 2015, Canadian common law programs were required to begin submitting annual reports in 2012 detailing their compliance with the national standard. The intention was to give the Approval Committee time to work with the law schools to

¹ Established in 2007, it presented its final report in 2009.

ensure that their programs would meet the National Requirement when it came into force.

6. In addition to refining the National Requirement to ensure that the specific elements were clear, and developing a recommendation for the approval process, the Implementation Committee recommended that the National Requirement be subject to periodic review. Pursuant to the Implementation Committee's recommendations the national standard is to be reviewed no less frequently than every five years with the first review completed by 2018.
7. When the NRRC began its work the National Requirement had been in force for only a few months and a comprehensive review of the standard was not contemplated. Rather, the Committee was asked to "focus on identifying and addressing immediate issues that have become evident as part of early implementation." In particular, the NRRC was asked to
 - a. identify and address issues that have arisen to date in applying the National Requirement;
 - b. consider components of the National Requirement that require more definition or variation to enable implementation to occur more effectively;
 - c. consider aspects of the recommendations that have not yet been implemented and how to advance those components; and
 - d. identify for Council's information and future planning emerging issues relevant to the National Requirement.

Overview of issues

8. Working with the Approval Committee, the NRRC generated a comprehensive list of issues that have arisen during the early experience with the National Requirement. A number of additional issues were added to the list in the course of the Committee's work. A copy of the complete list of issues is attached as Appendix "C" to this report.
9. The issues identified in this initial review fall into the following four general categories:
 - i. issues within the mandate of the Approval Committee to resolve;
 - ii. issues on which the NRRC was asked by the Approval Committee to provide input and/or guidance;
 - iii. issues the NRRC was required to resolve including those resulting in specific recommendations; and
 - iv. issues related to the application of the National Requirement by the National Committee on Accreditation to internationally trained candidates.

10. This report sets out the NRRC's findings and recommendations on these issues. In addition, as suggested in the report of the Working Group on the National Requirement Review Committee, the body charged with developing the terms of reference and recommended composition of the NRRC, the Committee also identified emerging issues for future consideration. Those issues are described at the end of this report.
11. There were also some issues on the original list that, upon reflection, the NRRC and the Approval Committee determined did not require further consideration. As a consequence those issues were removed from the list. The issues falling into this category are identified on the list but are not discussed in this report.
12. For the most part the issues that have arisen in the early years of implementation of the National Requirement can be addressed without making any changes to the standard itself. The NRRC is, however, recommending the following two amendments to the National Requirement (discussed in detail below at paragraphs 34-43):
 - i. Delete "legal and fiduciary concepts in commercial relationships" from the list of required private law principles set out in B. Competency Requirements Paragraph 3.3(b).
 - ii. Amend C. Academic Program, paragraph 1.1 to remove the word "presumptively," so that the paragraph would read, "*The law school's academic program for the study of law consists of three full-time academic years or equivalent which is 90 course credits.*"

National Requirement — general observations

13. In considering and developing a response to the issues identified for the initial review of the National Requirement, the Committee concluded that it is important to understand the approach to approval of law school programs that was endorsed by the Federation and its member law societies when they adopted the national standard.
14. The Committee notes that the Task Force considered and rejected a resource-intensive accreditation process, opting instead for what the NRRC considers to be a "light touch" approval process. The process outlined in the final report of the Task Force and further elaborated upon by the Implementation Committee relies not on site visits and other more intrusive measures, but rather on information provided by the law schools themselves. Recognition of this approach has guided the NRRC in its assessment and resolution, or proposed resolution, of the issues that have arisen in the early years of the National Requirement.
15. Another feature of the approval process that is relevant to the initial review of the National Requirement is the specific mandate given to the Approval Committee. The recommendations of the Implementation Committee were quite prescriptive in terms of

the compliance process, dictating that the approval process be based on annual reports from the law schools, and including the form of the annual report and a draft timetable for the annual assessments. The Implementation Committee did recommend that the Approval Committee be given the authority to make changes to the annual report form and the draft reporting timeline as well as “any other reporting timelines as it determines necessary,” but otherwise limited the Approval Committee’s mandate to assessing compliance with the National Requirement. The Approval Committee does not have the mandate to address policy matters or to alter the prescribed approval process.

16. It is evident that the approach to program approval adopted by the law societies has created a number of challenges for the Approval Committee, particularly for assessing the adequacy of a program’s learning resources. The NRRC has nonetheless concluded that the approval process is running effectively and that the Approval Committee members possess the collective expertise to critically examine the information provided by each program to make a fair assessment of whether the program meets the National Requirement.

Issues within the mandate of the Approval Committee

17. The NRRC concluded that a number of the issues identified for consideration in the initial review were within the mandate of the Approval Committee to resolve and did not require any input from the NRRC. These issues, together with details of their disposition are described below.

Ethics Requirement

Issue 2a: is the 2017-18 academic year a reasonable date for implementation of the increase of the ethics course hour requirement from 24 to 36? Does the Approval Committee have jurisdiction to fix an implementation date?

18. The increase in the credit hours required for the stand-alone ethics course was contemplated when the requirement was adopted. The NRRC agrees with the Approval Committee’s assessment that determining the timing of the increase was a matter within its jurisdiction. We note that the date for the increase in the required hours was discussed with the law schools prior to its implementation.

Compliance

Issue 14: should there be different consequences for “deficiency” respecting a prospective school vs. an established school?

19. In the case of both existing and proposed law school programs, a finding that the program does not comply with one or more elements of the National Requirement may lead to a finding of a deficiency with the result that the program may not be approved. In both cases, the Approval Committee works closely with the schools through its iterative

process to try to ensure that potential deficiencies are addressed and that potential prejudice to students is minimized. The NRRC is satisfied that this is an appropriate approach.

Process

Issue 28: should an approach be developed for capturing “emerging issues” (i.e. matters not within contemplation of the National Requirement)? Should this include an annual meeting of the Approval Committee and the Law Deans to discuss emerging issues?

20. The mandate of the Approval Committee makes specific reference to a role in enhancing “the institutional relationship between law societies and law schools at a national level.” In the view of the NRRC determining what form such efforts might take is a matter within the jurisdiction of the Approval Committee. We note, however, that it is important for the Approval Committee to advise the Federation Council of any such efforts and to coordinate those efforts and activities with others that may be undertaken by the Federation to sustain and enhance the positive relationship that exists with the legal academy.

Issues on which the NRRC was asked by the Approval Committee to provide input and/or guidance

21. Engagement with the Approval Committee was an essential element of the process adopted by the NRRC for its initial review of the National Requirement. The NRRC sought the views of the members of the Approval Committee on each of the issues under consideration (except those relating uniquely to the National Committee on Accreditation). On some issues, although the Approval Committee had reached its own conclusions about whether or how to address the specific issue, it sought the input of the NRRC rather than suggesting that the issue be removed from consideration.

Competencies

Issue 2b: consider questions/issues with the required ethics course content and approach.

- i. **Is the definition of “course” relating to the ethics and professionalism requirement appropriate/adequate?**
- ii. **Is it within the Review Committee’s mandate to consider whether the requirement for a stand-alone course for ethics should be reviewed or is an emerging issue?**

22. The Committee considered several issues related to the ethics requirement, including whether the requirement for a stand-alone ethics course should be reconsidered. After conferring with the Approval Committee, the NRRC concluded that no changes are required at this time.

Issue 3: In determining whether a school is meeting the required competencies, does the Approval Committee have the mandate to consider the method of evaluation used in the course (e.g. Pass/fail versus letter/mark grading)? If not, should it?

23. This issue was first raised by the Approval Committee itself, but members of the Approval Committee subsequently advised the NRRC that they had concluded that consideration of the evaluation method used by the various law programs for their respective ethics courses would be inappropriate. The members of the NRRC agree with this conclusion.

Process – Mandate

Issue 17: is completion of an annual report form to assess compliance the appropriate approach? Are there any improvements to the reporting form that should be made that go beyond the Approval Committee’s mandate to introduce?

24. The assessment of law program compliance with all aspects of the National Requirement is based on the review of information received from the schools. The Implementation Committee directed that this information be provided through an annual report for each law school program. The NRRC considers that turning to other sources of information, whether instead of or in addition to the annual report would be a significant shift in the approach to Law program approval recommended by the Task Force and approved by the Federation Council and the law societies. It was suggested by the Approval Committee that relying on other sources of information might also be perceived negatively by the legal academy as it could suggest a lack of confidence in the information provided by the law schools.
25. The approval process as currently structured is an iterative one involving a back-and-forth dialogue between the Approval Committee and each individual law school as necessary. The Approval Committee can and has made changes to the annual law school report form both in the interests of clarity and to improve the quality of information it receives. As mentioned above and discussed in more detail below, the members of the NRRC recognize that the decision to adopt a process based on information provided by the law programs themselves, rather than one using more objective sources of information such as site visits, presents challenges for those doing the assessments. We do not believe, however, that it would be appropriate at this time to make fundamental changes to the approval process.

Additional Issue: would it be appropriate for the Approval Committee to review pass/fail rates from licensing exams as part of its approval process?

26. During the course of the NRRC's review of the National Requirement, the Approval Committee expressed an interest in obtaining information from the law societies (where available) on the pass/fail rates of students from the various law school programs across the country. Members of the Approval Committee advised that they were concerned that the annual reports upon which assessments are based do not provide sufficient information on the strengths, weaknesses or overall effectiveness of the law programs. They suggested that a review of pass/fail data from law society bar admission assessments might provide objective, supplementary information.
27. Members of the NRRC have concerns about what would be revealed by data from exams that are not necessarily intended to assess the competencies in the National Requirement. In discussions with the Approval Committee, however, it was suggested that the real value in the data would be as a tool to help the Approval Committee assess whether it is asking the right questions of the law schools. On the understanding that pass/fail rate data would not be used to assess program compliance with the National Requirement, but rather for the limited purpose of assessing the Approval Committee's own processes, the members of the NRRC ultimately concluded that using pass/fail rate data would not be outside the mandate of the Approval Committee.

Issue 21: are the types of matters within the Approval Committee's mandate articulated clearly enough in the Task Force and Implementation Committee reports?

- a. **Is the Approval Committee's mandate with respect to general admission requirements clear?**

Issue 22: how should questions the Approval Committee does not have the authority to answer itself be resolved?

Issue 23: is there an appropriate mechanism through which the Approval Committee may seek assistance with urgent issues? If not, how can one be designed to be nimble enough to respond effectively and expeditiously to urgent issues?

28. As it does with all Federation committees, the Council plays a supervisory role over the Approval Committee and in that role has the power to interpret the Approval Committee's mandate. Council's oversight role also suggests that it is an appropriate forum for the Approval Committee to address issues that may arise between the periodic reviews. While it has been suggested that the Council is not a sufficiently nimble forum for this purpose, the Council meets a minimum of four times per year and can and does meet outside of the usual schedule to address urgent or pressing matters as required. The NRRC is persuaded that the Council is the appropriate forum for the Approval Committee to raise issues, including those it considers urgent, between the prescribed periodic reviews of the National Requirement.

29. In the view of the NRRC, although specific questions were posed about aspects of the mandate of the Approval Committee, the nature of the questions suggests that more general guidance would also be helpful. The NRRC is not proposing that the mandate of the Approval Committee be changed, but we have concluded that clarification of the committee's mandate is required. While we consider that the power to make recommendations is inherent in the mandates of all Federation committees, we recommend that the Council of the Federation confirm that the Approval Committee may raise matters on its own initiative and make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.
30. It may be that in recommending that the National Requirement be subject to regular review, both the Task Force and the Implementation Committee intended that those periodic reviews would be sufficient to address any issues in the application or content of the national standard that might arise. The members of the NRRC recognize that amendments to the National Requirement require the approval of both the Federation Council and the individual law societies. We also believe that it is important to engage the legal academy in Canada before making changes to the standard that common law programs are required to meet. These factors suggest that amendments to the national standard should be infrequent and considered only after an appropriate consultation process. It is our understanding that the members of the Approval Committee would agree with this approach. In suggesting that the Federation confirm that the Approval Committee has the power to recommend changes we are simply acknowledging that with their collective expertise the members of the committee responsible for assessing compliance with the National Requirement are well placed to identify issues that should be addressed between the periodic reviews of the standard.
31. The NRRC recommends an additional clarification of the mandate of the Approval Committee to confirm that it has jurisdiction over its own processes.
32. The mandate grants the committee the specific power to make changes and revisions to the annual law school report and also permits it to "make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in [the Implementation Committee] report." We also noted that in recommending that there be periodic reviews of the national standard, the Implementation Committee stated that these reviews would not preclude "adjustments and changes to the compliance process in the years between evaluations."² In indicating that the Approval Committee could make changes to the compliance process between periodic reviews, the Implementation Committee added the words "as set out in the mandate" of the Approval Committee. It is the view of the NRRC that, notwithstanding this reference, read together these provisions should be understood to give the Approval Committee jurisdiction over its processes, including determining the appropriate

² Common Law Degree Implementation Committee Final Report ("Implementation Committee Report"), recommendation 17.

frequency with which law school programs are assessed. As noted above, this does not require an amendment to the mandate of the committee. In our view Council's confirmation of this interpretation would be sufficient.

Issues the NRRC was required to resolve including those resulting in specific recommendations

33. While many of the issues identified for the initial review of the National Requirement were resolved by the Approval Committee on its own or with input from the NRRC, others were either more challenging or require consideration of possible amendments to the national standard. These include issues related to specific competencies, law program learning resources, and the frequency of the approval process. The Committee's conclusions and recommendations on these issues follow.

Competencies

Issue 1: does the competency currently stated as “legal and fiduciary concepts in commercial relationships” require clarification? If so, how should it be stated? Should this continue to be required competency?

34. The NRRC recommends that the competency “legal and fiduciary concepts and commercial relationships” (3.3 b.) be deleted from the National Requirement.

35. The fiduciary concepts competency is one of the Substantive Legal Knowledge competencies. The full provision reads

3.3 Private Law Principles

The applicant must demonstrate an understanding of the principles that apply to private relationships, including:

a. contracts, torts and property law; and

b. legal and fiduciary concepts in commercial relationships.

36. The proposal to include this competency in the National Requirement was controversial from the outset as noted in the final report of the Task Force:

The Task Force has received the most comment on the inclusion of the competency now described as “legal and fiduciary principles in commercial relationships.” The concern has been raised that unlike the other requirements that simply restate current components of the curricula or are more generic in their description, this competency appears to reflect a more specific content choice. The suggestion has been that this opens up a potentially endless debate on why other areas such as family law, estates, or labour law have not been included.

37. In its report the Implementation Committee included the following explanation of the competency:

This competency contemplates a conceptual overview of business organizations, including fiduciary relationships in a commercial context. It is open to schools to address this competency through a course in corporate law or in other ways.

38. Members of the Approval Committee advised that the provision is poorly understood and that law schools have struggled to ensure that they are capturing it correctly in their various course offerings. To address this issue the NRRC discussed with the Approval Committee the possibility of restating rather than deleting the competency. The challenge however proved to be in defining the competency with sufficient clarity while avoiding narrowing it in such a way as to effectively require law schools to make mandatory a course in business organizations.
39. Although we recognize that an understanding of fiduciary obligations is important for the practice of law, the members of the NRRC consider it equally important to ensure that the provisions in the National Requirement are clear and that compliance can be easily determined. In addition, the members of the Committee are mindful of the overall approach of the National Requirement which focuses on competencies rather than on specific course requirements. This led the NRRC to conclude that the appropriate response to the difficulties that have been experienced in applying the fiduciary concepts competency requirement is to amend the National Requirement to remove it. We note that the National Requirement is intended to ensure that graduates of Canadian common law programs acquire certain core knowledge competencies, but that the competencies included in the national standard do not represent an exhaustive list of all those that are useful.

Academic Program

Issue 4: does the term “three-year law degree – presumptively 90 course credits” require further clarification beyond the Approval Committee’s explanation and application of it in the context of the joint degrees? The use of the term “presumptive” suggests a different and lower number of course credits could apply in exceptional circumstances. There also remains uncertainty about the meaning of a “credit” and what definition will capture practices across faculties within a university and across faculties in different universities.

40. Section C 1 of the National Requirement sets out the academic program criteria that must be met by approved Canadian law programs. It includes the following requirement for the length of the academic program

1. Academic Program

1.1 The law school's academic program for the study of law consists of three full-time academic years or equivalent, which presumptively, is 90 course credits.

41. The qualifier “presumptively” was added to the National Requirement by the Implementation Committee as a clarification of the course credits that would be required to be considered equivalent to three-full time academic years of study. In its report the Implementation Committee indicated that “in law schools currently offering the common law degree the ‘equivalent in course credits’ to three full-time academic years presumptively means 90 credit hours.”³
42. The Approval Committee advised, however, that the qualifier has proven unhelpful and contributes to a lack of clarity in how a three-year degree is defined. The members of the Approval Committee suggested that the word “presumptively” could lead to an interpretation that fewer than 90 course credits might be acceptable. We note that the members of the Approval Committee considered the question of the minimum number of course credits when it developed guidelines for the application of the National Requirement to joint and dual degree programs and concluded that 90 credits was the appropriate minimum.
43. The members of the NRRC agree with the Approval Committee that it is important that the provisions of the National Requirement be as clear as possible. As 90 course credits is intended to be the minimum, the NRRC has concluded that it is important to eliminate any ambiguity created by the term “presumptively.” We therefore recommend that the provision be amended to read as follows

1. Academic Program

1.1 The law school's academic program for the study of law consists of three full-time academic years or equivalent, which is 90 course credits.

Learning Resources

Issue 8: as currently framed, is [the learning resources category] a useful category to be included in the National Requirement? If not, why not?

Issue 9: is the information currently sought within each learning resource category appropriate and useful? If not, why not and what information should be sought? For example,

- a. **What is the purpose behind asking for the student/professor ratio? Is there a better way to gather information?**
- b. **Libraries – Is it necessary to have bricks and mortar?**
- c. **What is the impact of insufficient budgets or deficits or increased budget pressures beyond law school’s control on determination of learning resources compliance?**
 - i. **Specifically, how might the following be taken into account?**
 - 1. **Reduced government funding.**

³ Implementation Committee Report pages 19-20.

- 2. caps on tuition or government approval required for tuition increases.
- ii. Could the impact of these factors be evaluated through an examination of budget dollars to student ratios?
- iii. Is this something the Approval Committee could proactively address with law schools to understand the issues for individual schools?

Issue 10: consider the following issues:

- a. What is meant by “irreducible minima?” Is this an absolute or relative assessment?
- b. How can resource requirements be assessed in the context of a school’s particular objectives and still allow for some objective criteria across schools?

Issue 11: is there room for the Approval Committee to monitor learning resources reporting requirements by considering the total number of students in the context of student to faculty ratio and budget to student ratio? If there is, is it necessary to consider benchmarks for what constitute appropriate ratios?

Additional issue: is a requirement that faculty members be engaged in research implicit in the National Requirement? Is it reasonable to conclude that there must be a minimum of 12 tenured or tenure-track faculty in every law program?

Issue 12: in assessing compliance with learning resource requirements, should the considerations continue to be the same for established schools and proposed new schools?

Additional issue: what options should be available for graduates of programs that are not approved due to deficiencies in learning resources?

44. As noted above, the learning resources requirements have proven to be the most difficult components of the National Requirement for the Approval Committee to apply. The basic requirement is that each law school program be “adequately resourced to enable it to meet its objectives.” The full text of the provision reads:

2. Learning Resources:

2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

2.3 The law school has adequate information and communication technology to support its academic program.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

45. This provision was included in the National Requirement in response to submissions made by the Council of Canadian Law Deans (“CCLD”) to the Task Force. In accepting the CCLD’s suggestion that the National Requirement should make reference to learning resources in addition to identifying knowledge and skills competencies, the Task Force emphasized that evaluating each school’s compliance with the learning resources requirement would be linked to a program’s specific “educational mission.” The Implementation Committee agreed with this approach, noting that it allowed “different schools to exist that require different levels of resources.”⁴
46. Although the Task Force suggested that “certain irreducible minima” are required to give law societies the confidence that graduates of a program have acquired the specified competencies, both the Task Force and the Implementation Committee declined to be prescriptive in specifying the resources required. The Implementation Committee report focused on the information that law schools would need to provide, noting that the “goal is that law schools provide sufficient information to allow the Approval Committee to understand the learning resources context within which the national requirement is being met in each school.”⁵
47. This open-ended approach to identifying the required learning resources presents challenges for the Approval Committee. However, the NRRC has concluded (concurring with the members of the Approval Committee) that despite the challenges there is value in continuing to assess law program compliance with the requirement that the programs have adequate resources.
48. Members of the Committee considered different approaches to resolving the challenges associated with the learning resources requirement, including the development and application of benchmarks (minimum standards) and reliance on provincial regulation of degree granting programs.
49. As noted above, neither the Task Force nor the Implementation Committee elected to set specific standards for learning resources, but the Task Force did conclude “that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved.”⁶ This reference to “irreducible minima” led the Approval Committee to consider developing benchmarks to use in the assessment of a program’s learning resources. To date this

⁴ Implementation Committee report, page 26

⁵ Implementation Committee report, page 27

⁶ Task Force report, page 42

has involved looking at the ratios of students to faculty, library resources, budget dollars etc. to determine whether it is possible to establish minimum benchmarks for these learning resources. The only specific benchmark suggested by the Approval Committee was a requirement for a minimum of 12 tenured or tenure-track faculty.

50. In considering whether the use of benchmarks would be appropriate, members of the NRRC noted the focus in this section of the National Requirement on a program's specific objectives and needs. It is the view of the Committee that in light of the references to the objectives of the school, the needs of its academic program, and its teaching, learning and research objectives, the learning resources requirement must be seen as a subjective, relative standard that does not lend itself to defined benchmarks.
51. The NRRC is also of the view that the learning resources requirement must be interpreted in a manner consistent with the mandate and resources of the Approval Committee. The Approval Committee's mandate does not contemplate a resource-intensive accreditation process. Rather, as is also clear from the reports of the Task Force and the Implementation Committee, what was contemplated was a light-touch process that relies on information provided by the schools. This factor lends support to the NRRC's conclusion that the adequacy of a program's learning resources ought not to be measured by reference to benchmarks or minimum standards.
52. The members of the NRRC considered the possible merits of replacing the learning resources requirement with a provision stipulating that only those law programs offered by universities regulated by a Canadian provincial or territorial government are eligible for approval.
53. A number of possible advantages of such an approach were identified, foremost among them the promise that relying on government regulation would relieve the Approval Committee of the difficult task of assessing the adequacy of the resources of the various law programs across the country. Other potential advantages identified included avoiding problems that might arise should a program be denied approval due to a finding that its resources were insufficient, including potential legal challenges and what to do with graduates. It was also suggested that such an approach would address concerns raised by members of the Approval Committee about the possibility of requests for approval from offshore schools for Canadian common law programs.
54. An examination of provincial regulation of university degree-granting programs across Canada revealed that every jurisdiction has some sort of approval process or government oversight, supplemented by a system of cyclical reviews administered by the universities themselves. There is, however, considerable variation from jurisdiction to jurisdiction. It is also unclear how much focus there is on learning resources in either the initial approval process or subsequent cyclical reviews.

55. The NRRC noted that replacing the learning resources requirement with a requirement that programs be offered in provincially regulated universities would be a significant change in approach. Combined with concerns about whether provincial oversight is either sufficiently consistent or sufficiently focused on learning resources this factor led the NRRC to conclude that it would not be an appropriate replacement for the existing requirement. (The question of applications for approval from offshore law schools was identified as an emerging issue and so was not on the list of issues to be directly addressed by the NRRC. As such, the Committee takes no position on whether a provision requiring programs to be offered through universities regulated by a Canadian provincial or territorial government would be an appropriate response to that issue.)
56. The Committee is of the view that it is important to understand the assessment of compliance with the learning resources requirement as a contextual exercise based on the specific objectives of each program. Notwithstanding the reference in the Task Force report to “irreducible minima” the overall language of the learning resources provisions makes it clear that rather than having to meet certain defined or absolute criteria, programs must be required to demonstrate to the Approval Committee that their learning resources are sufficient for them to meet their objectives. As a result, the members of the NRRC have concluded that the development and use of benchmarks or minimum standards, for example the suggestion of a required minimum number of tenured or tenure-track faculty, is not consistent with the overall approach to program approval established by the Task Force and the Implementation Committee.
57. The NRRC recognizes that the members of the Approval Committee have found the assessment of learning resources difficult. We are of the view that some of the difficulty experienced by the Approval Committee may be related to its search for objective criteria against which to measure the resources available to individual law programs. Both the language of the requirement and the different ways in which programs understand and describe their resources make it very difficult to articulate meaningful minimum requirements. As noted above, the NRRC has concluded that it is neither necessary nor appropriate to do so.
58. The members of the NRRC believe that the Approval Committee members possess the collective expertise to critically examine the information provided by each program to make a fair assessment of whether the resources available to a program are sufficient for it to meet its specific objectives while also ensuring that graduates acquire the competencies set out in the National Requirement.
59. The conclusions of the NRRC set out above effectively answer most of the specific questions related to learning resources that were before the committee for consideration. However one question – the consequences of a finding of a learning resources deficiency – needs to be addressed directly.

60. While it is possible to remedy a deficiency related to any of the competencies set out in the National Requirement by requiring graduates to demonstrate competence through the NCA process, it is less clear what remedy might exist in the event that a program is not approved due to a learning resources deficiency. The NRRC recognizes that a finding by the Approval Committee that a program is deficient due to issues related to learning resources would have a profound impact on graduates even though such a deficiency is, by its nature, beyond the control of individual graduates to either avoid or remedy. To be fair to the programs and their students, before refusing to approve a program due to a learning resources deficiency the Approval Committee must provide clear notice to the program of the precise nature of the deficiency, the action required to rectify the problem, and the deadline for doing so. Ensuring that a school understands the nature of the deficiency and how to fix it, and that sufficient time is given to permit the program to remedy the problem will serve the interests of fairness and will also minimize potential prejudice to students enrolled in the program.

Issues related to the NCA

61. The list of issues generated for the NRRC to consider included the following two related to the application of the National Requirement to the assessment of the credentials of internationally trained lawyers and law graduates.

Issue 18: how should the NCA assess the competencies that cannot be satisfactorily tested by the NCA's written examinations, including legal research skills?

Issue 19: to what extent is the learning resources requirement practically applicable in the NCA context? If it is not, what are the implications for the National Requirement, if any?

62. The NRRC sought the views of the members of the NCA on these issues. We were informed that the NCA revised its assessment policy in anticipation of the National Requirement coming into force in January 2015. The relevant provisions of the policy are set out below:

1.3.2.2.1 Institutional Requirement

An Applicant must have obtained his or her legal education at an institution that is approved, recognized, accredited or otherwise accepted by the authority, or its delegate, responsible for the regulation of the legal profession in the Relevant Jurisdiction.

...

1.3.2.3.2 Legal Research

The Applicant must have demonstrated the ability to carry out legal research by doing the following:

- (a) identifying legal issues;*
- (b) selecting sources and methods and conduct legal research relevant to Canadian Common Law;*
- (c) using techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues in a Canadian Common Law context;*
- (d) identifying, interpreting and applying results of research; and*
- (e) effectively communicating the results of research.*

Applicants given credit for their legal education will be deemed to satisfy this requirement.

1.3.2.3.3. Oral and Written Communications

An Applicant must demonstrate the ability to communicate clearly in English or French. In particular, the Applicant must demonstrate the ability to:

- (a) identify the purpose of the proposed communication;*
- (b) use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- (c) effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.*

The NCA will consider the Applicant to have demonstrated the required competence in English or French and will not require the Applicant to complete the test prescribed below if:

- (a) the language of instruction of the Applicant's legal academic qualifications was English or French, and*
- (b) such qualifications were obtained in a country where English or French is an official language.*

In the event that an Applicant does not meet the requirement set out above, the Applicant will be required to complete one of the following:

- (a) For English, the International English Language Testing System (IELTS) test, and obtain a minimum score of 7.0 across all of the following elements: writing, speaking, reading and listening.*
- (b) For French, TESTCan, and obtain a minimum score of 4.5 across all of the following elements: writing, speaking, reading and listening.*

The Managing Director will, upon receipt of satisfactory evidence, grant an Applicant an exemption from the English or French language competency requirement if the Applicant can establish that the Applicant has completed the prescribed test within the two years immediately preceding the NCA's receipt of the application and has obtained the minimum scores set out above.

63. NCA members noted that the assessment policy addresses communication and research skills, and includes a specific standard for measuring communication skills. At present, however, the policies do not provide for meaningful assessment of research skills, which cannot be satisfactorily addressed through the examinations that NCA candidates must pass to address gaps in their substantive legal knowledge.
64. It is the consensus of the members of the NCA that it would be possible to design an on-line module to assess research skills. The development of such a module is, however, on hold pending the outcome of a comprehensive review of the NCA that is currently underway.
65. While the outcome of the NCA review cannot be known, it is expected to result in recommendations to address the underlying question of how best to ensure that NCA applicants are successful in the bar admission processes and in legal practice. In the circumstances the NRRC concluded that the question of how the NCA should assess such skills as research and communications should be deferred pending the outcome of the review process.
66. The members of the NCA suggested that the learning resources requirement is appropriately addressed through the NCA policy of recognizing only those law degrees “approved, recognized, accredited or otherwise accepted by the authority, or its delegate, responsible for the regulation of the legal profession in the Relevant Jurisdiction” (see section 1.3.2.2.1 above). The NRRC agrees with the view of the members of the NCA that where application of the National Requirement to the NCA poses practical limitations some flexibility is required. We are satisfied that the NCA policy of relying on the approval, recognition, or accreditation processes in the jurisdiction in which the candidate obtained their legal training is a reasonable substitute for the learning resources requirement.

Emerging issues

67. The NRRC’s Terms of Reference include a requirement for the committee to “identify for Council’s information and future planning emerging issues relevant to the National Requirement.” The NRRC was not tasked with the job of considering or providing recommendations on those issues; our role is limited to their identification.
68. With input from the members the Approval Committee, the NRRC has identified the following issues, many of which are already being explored by some law schools, that, in our view, the Federation and the law societies will need to consider in the future:

Institutional Structures:

- Would there be merit in establishing a forum for discussing emerging issues and fostering collaboration and cooperation between the regulators and the legal academy and other justice system stakeholders?

Relationship between the National Requirement and the Content of Legal Education:

- In what ways might the National Requirement and the approval process respond to innovations in pedagogy and evaluation?
- In what ways might the National Requirement respond to the education-related recommendations of the Truth and Reconciliation Commission Report?
- Can or should the National Requirement address competing and coexisting legal traditions, in particular indigenous legal traditions?
- Can or should the National Requirement include additional competencies (for example, cultural, linguistic, technology-related)?

Relationship between the National Requirement and Delivery of Legal Education:

- In what ways might the National Requirement respond to technology-supported learning? Should the requirement that two thirds of instruction must be in person be reconsidered? If the requirement remains, should face-to-face instruction be understood to include the use of interactive (synchronous) digital instruction methods, for example video conferencing?
- Can or should the National Requirement accommodate legal education via distance learning?
- Are there particular issues associated with “Flex-time programs” that are relevant to the National Requirement?

Approval and Compliance:

- Should the Approval Committee be able to consider “exceptions” to what would otherwise be a non-compliant program, in cases, for example, of innovation or experimentation? If so, should criteria be developed and approved by the Federation and the law societies to govern such exceptions? If not how should applications for approval of innovative and/experimental programs be addressed?
- How should potential applications for approval from freestanding law programs (i.e. those not associated with a university), off shore law schools, specialized law schools and/or for-profit law schools be handled? Does the National Requirement need to be clarified or amended in anticipation of such applications?
- What impact is the reduction in funding for Canadian law schools having on the ability of law programs to meet the National Requirement?

Recommendations

69. As noted earlier in this report, when the NRRC was established the National Requirement had only recently come into force. In the circumstances, the NRRC was not asked to undertake a comprehensive review of the national standard, but rather was asked to focus on those issues that had arisen in the early implementation period. Most of those issues related not to the content of the National Requirement, but to its implementation. Many of the issues identified for consideration in the NRRC's initial review were within the jurisdiction of the Approval Committee to resolve on its own. Others required advice from the NRRC or a decision of the Committee. Our consideration of the issues has, however, led the NRRC to conclude that two amendments to the National Requirement are required:

- deletion of "legal and fiduciary concepts in commercial relationships" from the list of required private law principles set out in B. Competency Requirements Paragraph 3.3(b); and
- removal of the word "presumptively," from paragraph 1.1 of section C. Academic Program so that the provision would read, "*The law school's academic program for the study of law consists of three full-time academic years or equivalent which is 90 course credits.*"

70. In addition, as discussed at paragraphs 28-32 above, the NRRC is recommending that the Council of the Federation confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.

71. Although the proposed changes to the National Requirement are not extensive and do not add to the requirements that graduates of common law programs must meet, the members of the NRRC considered it important to provide an opportunity for interested stakeholders to comment on the proposed amendments. We therefore circulated the report to the law societies, the CCLD, the Canadian Association of Law Teachers and the Canadian Association for Legal Ethics inviting written comments on the two amendments set out above until May 27, 2017. [Add anything that arose from the consultation. If nothing, add that we received no feedback]

72. The NRRC will be submitting its final recommendations to the Council of the Federation for approval at its June 21, 2017 meeting. To ensure that the academy and the Approval Committee have sufficient time to adapt as necessary, the NRRC recommends that the amendments be implemented no sooner than January 2018.