



Federation of  
Law Societies  
of Canada

Fédération des ordres  
professionnels de juristes  
du Canada

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# Final Report and Recommendations

# National Requirement Review

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February 2024

## Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>BACKGROUND ON THE COMMITTEE AND THE REVIEW PROCESS .....</b>	<b>3</b>
<b>REVIEW OF ISSUES AND RECOMMENDATIONS FOR AMENDMENTS .....</b>	<b>7</b>
Mode of Study .....	7
Experiential Learning .....	10
Skills Competencies .....	12
Call to Action 28.....	14
Ethics and Professionalism .....	23
<b>OTHER RECOMMENDATIONS .....</b>	<b>26</b>
Law School Programs Sandbox .....	26
Transition Plan .....	28
<b>OTHER ISSUES FOR INFORMATION .....</b>	<b>29</b>
Wellness .....	29
Forum on Continuum of Legal Education .....	30
Operational Issues.....	31
<b>SUMMARY OF RECOMMENDATIONS .....</b>	<b>31</b>
<b>APPENDIX A .....</b>	<b>33</b>
<b>APPENDIX B .....</b>	<b>34</b>
<b>APPENDIX C .....</b>	<b>41</b>



## INTRODUCTION

1. The National Requirement Review Committee (“Committee”) submits this report to Council of the Federation (“Council”) on its review of the National Requirement and recommendations for amendments.
2. The National Requirement is the standard that specifies the knowledge and skills graduates of Canadian common law programs and internationally trained lawyers and law graduates must acquire to be admitted to bar admission programs in the Canadian common law jurisdictions. It also applies to applications for new Canadian common law degree programs. It is subject to review at least every 5 years.
3. The Committee was struck in 2021 with a mandate to review the content of, and the process for assessing compliance with, the [National Requirement](#) and make recommendations for amendments, within the parameters of the Terms of Reference. The Terms of Reference (Appendix A to this report) required the Committee to consider in its review changes in legal education and the practice of law since the National Requirement was developed, the Competency Profile Development Project undertaken by the Assessment Modernization Committee of the National Committee on Accreditation (“NCA Competency Profile Development Project”), and applicable fair access to regulated professions legislation. The Terms of Reference also called for robust consultation with key stakeholders.
4. The Committee distributed a [Discussion Paper](#) in June 2023 to law societies and other interested parties seeking input on options and preliminary proposals for amendments to the National Requirement. The extended deadline for input was December 4, 2023.
5. The Committee received over 30 written submissions and additional comments in meetings with contributors. It carefully considered all of the feedback, particularly with regard to differing points of view on the issues, and keeping forefront of mind its mandate under the Terms of Reference and the scope and purpose of the National Requirement.
6. That process of deliberation led the Committee to revise some of its recommendations and to proceed with others as they were crafted in the Discussion Paper. The Committee’s final recommendations are presented in this report to Council for decision, along with reporting on ancillary issues. The current National Requirement, with proposed changes highlighted, is found in Appendix B to this report.

## BACKGROUND ON THE COMMITTEE AND THE REVIEW PROCESS

7. The Committee is comprised of members of Council, law society senior staff, and members of the legal academy. The Committee was structured to ensure substantial representation from both the decanal and teaching ranks. Four Committee members are



members of the academy and, of those, three are current or former Deans and one is an Indigenous legal academic. The current members of the Committee are:

- Jacqueline Horvat (Committee Chair; Treasurer, Law Society of Ontario)
- Priya Bhatia (Executive Director, Professional Development & Competence, Law Society of Ontario)
- Adam Dodek (Professor and former Dean, University of Ottawa, Faculty of Common Law)
- Scott Franks (Assistant Professor, Lincoln Alexander School of Law, Toronto Metropolitan University)
- Brook Greenberg (Council member nominated by the Law Society of British Columbia)
- Ian Holloway (Canadian Common Law Program Approval Committee member; Dean, Faculty of Law, University of Calgary)
- Christian Hurley (Director of Admissions and Education, Law Society of Newfoundland and Labrador)
- Erin Kleisinger (Federation President)
- Sébastien Lebel-Grenier (Principal and Vice-Chancellor, Bishop’s University)<sup>1</sup>

8. The Committee engaged in extensive outreach in the first stage of this review, prior to formal consultation, including:

- communiqués to a wide range of individuals and organizations, in [September 2022](#) and [February 2023](#), summarizing the initiative, the status of the work, requesting input and inviting comments in writing or in a meeting with the Committee;
- meetings with the Canadian Association of Law Teachers (“CALT”) in March 2023 and May 2023;
- meetings with the Council of Canadian Law Deans (“CCLD”) in March 2023, May 2023 and September 2023;
- meeting in May 2023 with the Association for Canadian Clinical Legal Education; and
- numerous meetings through April 2023 and May 2023 with Indigenous groups and individuals in connection with Call to Action 28. (A list of the individuals and groups consulted during the review is found in Appendix C to this report.)

9. To identify the priority issues for this review, the Committee considered the list of emerging issues highlighted during the previous review of the National Requirement, input received in response to the fall 2022 communiqué, and prominent issues in the current environment.

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<sup>1</sup> Pinder Cheema (former Council member nominated by the Law Society of British Columbia) and Tracey Lindberg (Professor, University of Victoria, Faculty of Law) were members of the Committee from its inception until December 2022 and October 2023 respectively. The Committee gratefully acknowledges their contributions.



10. The issues considered by the Committee, and which gave rise to the options and preliminary proposals addressed in the June 2023 Discussion Paper, include:

- i) Mode of Study
- ii) Experiential Learning
- iii) Skills Competencies
- iv) TRC Call to Action 28
- v) Ethics and Professionalism
- vi) Substantive Legal Knowledge
- vii) Encouraging Innovation
- viii) Wellness

11. Through this process the Committee was apprised of the status of the NCA Competency Profile Development Project and concluded through research, internal discussions and discussions with the NCA that:

- i) NCA requirements for internationally-educated lawyers and law graduates must reflect the National Requirement to ensure fair and objective outcomes, but identical assessment processes are not required under fair access legislation;
- ii) as NCA requirements must reflect the National Requirement, the NCA Competency Profile Development Project will ensure that the final NCA Competency Profile is based on the National Requirement, including any amendments; and
- iii) given this, and the complexity of each project, the two projects would proceed in parallel, with information shared between them, and the NCA Competency Profile adjusted as needed following completion of the National Requirement review.

12. The recommendations to Council in this report are based on the work described above and the subsequent consideration of feedback received in response to the Discussion Paper from law societies and other interested parties between July 2023 and December 2023. (See Appendix C to this report for a list of contributors to the review.)

13. The Committee's recommendations are briefly summarized below. They are also included at the end of this report.

- i) Revise mode of study provision under Academic Program (C. 1.2) to require that 60 of the 90 required credits be taught in-person; addition of definitions of "credit", "distance learning", "in-person instruction", and "interactive online instruction" in the Definitions section (A.1).
- ii) Include new requirement under Academic Program that the program must offer "students experiential learning opportunities integrated into the curriculum, such as



simulations of practical skills, moot court, trial advocacy courses, clinics, and Indigenous law camps.” (C. 1.5)

- iii) Amend skills competency under Oral and Written Communication requiring the ability to communicate clearly in English or French to read, “...communicate clearly, professionally and effectively in the English or French language.” (B. 1.3 a)
- iv) Include new requirement under Academic Program that the program must offer “students opportunities, integrated into the curriculum, to collaborate and work in teams.” (C. 1.6)
- v) Amend Ethics and Professionalism requirement to remove the numbered list of specific topics under B. 2.1a and add a new clause (new B. 2.1c): ...“the nature and scope of a lawyer’s duties to Indigenous peoples and persons of Canada as part of ongoing efforts to foster truth and reconciliation.”
- vi) Add new section at B.3, “Truth and Reconciliation”.
- vii) Add substantive legal knowledge requirements under “Indigenous Law” and amend existing substantive legal knowledge requirements to include content on Indigenous law and Canadian law as it relates to Indigenous peoples and persons (B.4). Add definition of “Indigenous law” to Definitions section (A.1).
- viii) Include new requirement under Academic Program that the program “integrates content throughout the curriculum, where applicable, on the ways in which Canadian law relates to Indigenous peoples and persons.” (C. 1.7)
- ix) Make various “housekeeping” amendments to improve consistency in wording and style of the National Requirement document (highlighted in appended document).
- x) *No amendment required:* Approve the concept of a Law School Programs Sandbox, with Terms of Reference to be developed for further consideration.
- xi) *No amendment required:* Approve a transition plan requiring law schools and the NCA to be able to demonstrate compliance with the amended National Requirement as of January 2029.



## REVIEW OF ISSUES AND RECOMMENDATIONS FOR AMENDMENTS

### *Mode of Study*

14. The 2018 National Requirement stipulates that “*the course of study must consist primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students*”.<sup>2</sup> The Federation Task Force on the Canadian Common Law Degree, charged with making recommendations for the development of the National Requirement, made clear in its 2009 final report that the word “primarily” was intentionally used to ensure there was flexibility in curriculum design and room for innovation.<sup>3</sup>

15. The Federation Common Law Degree Implementation Committee (“Implementation Committee”), which provided guidance on the implementation of the National Requirement, interpreted the word “primarily” in its 2011 final report to mean that “a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face conducted with the instructor and students in the same classroom” and recommended that this requirement be re-examined as legal education and delivery methods evolve.<sup>4</sup>

16. Technologies supporting online learning (as well as the delivery of legal services) have advanced in the decade since the National Requirement was developed, and were accelerated by the demands of the COVID-19 pandemic. The effectiveness of these technologies in delivering the curriculum and meeting the objectives of the National Requirement, along with associated benefits and challenges, remains a matter of debate. The Committee considered available literature and studies on the topic but concluded that there is not yet enough evidence, post-pandemic, to come to a clear finding in the context of legal education. The Committee also considered the annual reports of the law schools to the Canadian Common Law Program Approval Committee (“Approval Committee”) describing their experiences with online learning,<sup>5</sup> input received from external contributors, and approaches in other jurisdictions.

17. Apart from the question of the right balance between in-person and online learning, the meaning and wording of the current requirement needs clarification. Sources of potential uncertainty include:

- i) the use of “and/or” in the current wording suggests that it might be sufficient for the course of study to consist “primarily” of online synchronous learning;
- ii) as noted above, the Implementation Committee confirmed in 2011 that this wording should be interpreted as requiring two-thirds in-person instruction, although the

<sup>2</sup> [National Requirement](#), s. C 1.2

<sup>3</sup> [Task Force on the Canadian Common Law Degree](#), Final Report (2009), p. 41

<sup>4</sup> [Common Law Degree Implementation Committee](#), Final Report (2011), pp. 21-22

<sup>5</sup> Comments on this topic from law school reports were summarized for the Committee on an anonymous basis. Considerable support was expressed by law schools for continuing to deliver the curriculum primarily in-person, while using the technology they have invested in to supplement in-person instruction.



wording in the National Requirement was not revised to reflect that interpretation and it was clearly intended that the requirement be re-examined;

- iii) since summer 2020 the NCA has required that two-thirds of instruction in an applicant's law degree be in-person or involve direct interaction between instructor and students (i.e. synchronous online instruction), however a course that uses interactive online instruction must be part of an overall law program that consists of a minimum of one year of in-person instruction (effectively making one year of in-person instruction the minimum requirement);<sup>6</sup> and
- iv) in response to the pandemic, in summer 2021 the Approval Committee began to apply this same standard (one year in-person instruction) in its assessment of law school programs.

18. In the Discussion Paper, the Committee solicited input on two options for an amended provision in the National Requirement on mode of study:

- i) require the equivalent of two years in-person instruction i.e. 60 credits of 90, consistent with the 2011 interpretation of the Implementation Committee; or
- ii) require the equivalent of one year, i.e. 30 credits of 90, with the additional requirement that another 30 credits be offered through either in-person instruction or interactive online instruction, consistent with current NCA policy and practice of the Approval Committee.

19. With either option, the Committee also proposed to add definitions of "in-person instruction", "interactive online instruction", "distance learning" and "credit" to the National Requirement.

### Consideration of feedback

20. Most of the contributors who commented on mode of study support a minimum of two years in-person instruction, including consensus from the law societies that provided written feedback, consistent with the Implementation Committee's 2011 interpretation and the expectation of law schools pre-pandemic. The reasons provided in the feedback for supporting this option include:

- i) the difficulty of developing critical professional skills online, including inter-personal skills;
- ii) the observed deterioration of both student wellbeing and basic interpersonal skills concurrent with the rise in online instruction;

<sup>6</sup> See National Committee on Accreditation, Policy Manual, section 7.2, online [here](#)





- iii) the inconsistency of increased online instruction with other Committee recommendations (e.g., providing experiential learning and teamwork opportunities, and additional skill competency regarding professional communication skills);
- iv) the lack of high-quality data on the effectiveness of online learning in the legal education context;
- v) the possibly faulty assumption that increased online learning will lead to improved access to legal education in remote locations, given the unreliability of internet access; and
- vi) the likelihood, if only one year in-person is required, that students will seek out programs with that minimum requirement for reasons of convenience and cost savings without sufficient understanding of the impact on their education.

21. It is important to emphasize, as was highlighted by contributors, that in-person instruction does not mean in-classroom instruction only. For example, it could include clinical work, field study, or study at a temporary location. The proposed definition of in-person instruction requires “synchronous face-to-face interaction conducted with the instructor and students in the same physical location.” As such, law schools are encouraged to consider innovative approaches to in-person instruction outside of the classroom that will enhance experiential learning and improve access to legal education.

22. Feedback also emphasized that both asynchronous (or “distance”) and synchronous online learning tools have potential, not just for flexibility, but also for deep engagement and collaboration on complex legal topics that reach beyond the traditional law school classroom. It is expected that both the in-person and online components of the 90-credit law degree can be infused with creativity and innovation.

23. Further, where it is envisioned that even more room for innovation is needed to advance curricular objectives, the proposed Law School Programs Sandbox (discussed below) offers law schools the opportunity to bring forward ideas for alternative approaches, subject to eligibility requirements (and possibly also an opportunity for data collection on the effectiveness of approved alternative programming.)<sup>7</sup>

24. As noted above, the Approval Committee changed the requirement for law schools during the pandemic to require only one year in-person instruction (an interpretation which was permitted by the broad language in the National Requirement). While this flexibility was needed during the pandemic, the majority of contributors have confirmed a strong preference for a

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<sup>7</sup> Some of the input received suggested that the law societies might play a role in assessing the effectiveness of online education through communication with and observation of graduates who attended law school through the pandemic (recognizing that the emergency context of that period adds an exacerbating factor that may skew the conclusions).



minimum requirement of two years in-person instruction. The NCA would adopt this same standard once included in the National Requirement.

25. It may be beneficial for the Approval Committee to provide law schools with guidance on how to track different modes of study integrated into a single course, as was suggested in input from some contributors.

26. Given the pace of advancements in technology and changes in the legal profession, and the valid points made by several contributors in favour of greater flexibility for online learning, the Committee recommends that this requirement be reviewed regularly.

### **Recommendation**

27. The Committee recommends that the equivalent of two years in-person instruction i.e. 60 credits of 90, be required, with the remaining 30 credits open to in-person instruction, interactive online, or distance learning.

28. The Committee is not recommending changes to the wording of the revised requirement or the definitions proposed in the Discussion Paper. The recommended amendments can be found in the appended National Requirement at section A.1 c.-d. and f.-g. (p. 34 of this report) and section C. 1.2 (p. 39 of this report).

### ***Experiential Learning***

29. Underlying the National Requirement is the principle that the foundations for skills and knowledge needed by an applicant to a bar admission program should be established in law school. In the Committee's view, that foundation ought to include some practical experience. While all existing law schools offer experiential learning in some form, and are commended for advances in this field, the National Requirement sets the eligibility standards for new law school programs as well which should also be required to include experiential learning opportunities.

30. Given the varying resources of the law schools, and the value to law school applicants of a variety of programming options, the Committee was not inclined to establish a strict "one size fits all" requirement for experiential learning.

31. In developing a preliminary proposal in this area, the Committee was informed by feedback strongly advocating for clinical legal education in law schools, concern expressed by law Deans and instructors about the impact on the academic program of mandating experiential learning (as well as the cost and complexity of that endeavour), and input that revealed a perceived gap in practical experience upon entry to practice.

32. In the Discussion Paper, the Committee sought input on its preliminary proposal to add to the Academic Program section (C.1) a requirement that law schools make experiential learning opportunities available within the curriculum (i.e. not extracurricular, which could present



barriers to participation), whether those opportunities are elective or mandatory for the students. Examples were offered in the wording of the proposed provision, including simulations of practical skills, moot court, trial advocacy courses, clinics, and Indigenous law camps. This proposal was intended to set an appropriate minimum standard for experiential learning, applicable to new and existing law schools, without overburdening law schools.

### **Feedback received**

33. The feedback received, including from the law societies that commented on the proposal, was generally supportive of the proposed provision. Several contributors offered additional examples of experiential learning opportunities. Contrary feedback expressed views, on the one hand, that the requirement does not go far enough in ensuring that graduates from common law programs have developed a foundation of practical experience before entering bar admission programs; and, on the other, that this new requirement is unnecessary as law schools already offer experiential learning opportunities.

34. This latter argument was made by a number of contributors in response to other proposals as well. The Committee commends Canadian law schools for their efforts and successes in introducing innovative programming since the introduction of the National Requirement, in keeping with the needs of their graduates. The proposed new requirement that law schools offer experiential learning opportunities does not begin to approach what many law schools are already doing and so will not add an additional obligation. However, since the National Requirement is intended to express what is required of applicants from existing law schools as well as to establish minimum standards for new law schools, it is important that the Committee not overlook essential requirements simply because they are already reflected within the curriculum of most or all existing law schools.

35. Last, as acknowledged by several contributors, it is possible, and for some desirable, that more prescriptive requirements be considered on a future review of the National Requirement; however a deeper analysis and consultation with key stakeholders on this issue would be needed to ensure that the implications are fully understood, including how the NCA would implement such a requirement.

### **Recommendation**

36. The Committee recommends that the National Requirement be revised to include a clause in the Academic Program section requiring law schools to make experiential learning opportunities available, whether elective or mandatory, that are integrated into the curriculum.

37. The Committee has not added to the list of examples included in the recommended requirement, as the list is not exclusive and intended only to illustrate the kind of experiential learning law schools might consider.

38. The recommended amendment can be found in the appended National Requirement document at section C.1.5 (p. 39 in this report).



## Skills Competencies

39. An applicant to a bar admission program must demonstrate skills competencies in Problem-Solving, Legal Research, and Oral and Written Legal Communication ([National Requirement](#), section B 1.3). The Committee considered whether any additional skills competencies were needed. Another way of expressing this question is whether any other skills necessary for entry to a bar admission program require a foundation to be established in law school.
40. Based on several factors — an analysis of skills required for admission to the bar in most jurisdictions, input from students and young lawyers, and observations from Committee members and external contributors — the Committee concluded that the main skills necessary for practice missing from the National Requirement are: i) professional communication skills; ii) client relationship skills; and iii) practice management/ file management skills.
41. The National Requirement addresses what an applicant must demonstrate for entry to a bar admission program, not for entry into the profession; law school is just the first step in career-long learning. As such, the Committee also turned its mind to whether it is appropriate to lay the building blocks for these skills in law school, or if that training is better suited to a bar admission program.
42. The Committee concluded that the traditional law school model, most common in Canada, is not the right place to teach practice/file management skills. That does not mean those skills are a low priority; it means that, in the Committee’s view, they currently may be more effectively and appropriately taught in a bar admissions program. The Committee also concluded that an adequate base for client relationship skills is already included in the Ethics and Professionalism and Skills Competencies sections of the National Requirement, to be subsequently built on through bar admission programs and continuing professional development.
43. The Committee came to the view that the building blocks for professional communication skills should and could be laid in law school, that there is a perceived gap in these skills among law school graduates (which has intensified since the pandemic), and that the lack of reference in the National Requirement to these skills is a notable omission.
44. The Committee offered a preliminary proposal in the Discussion Paper that two new provisions be added to the National Requirement to address these skills:
- i) under Oral and Written Legal Communication, an additional requirement that “the applicant must have demonstrated the ability to communicate and interact with other participants in the justice system effectively and professionally”; and



- ii) under the Academic Program, an additional requirement that “the academic program offers students opportunities, integrated into the curriculum, to collaborate and work in teams.”

45. As explained in the Discussion Paper, the proposed skills competency in professional communications might be demonstrated in law school in a clinical setting with actual participants in the justice system, but likely would more often be simulated in interactions with peers and professors. Further, the proposal for a new requirement that law schools provide opportunities to collaborate and work in teams was intended to provide one avenue in which professional communication skills could be practised and evaluated.

### **Feedback received**

46. The main comments received on the first proposal regarding professional communication skills were:

- i) confirmation from most contributors that commented on the proposal of a perceived gap in these skills amongst law school graduates;
- ii) the view that this new requirement is unnecessary because these skills are already being taught in various ways through the curriculum in law schools;
- iii) concern about how these skills would be taught and evaluated (especially if only one year in-person instruction required); and
- iv) uncertainty about the meaning of the wording “justice system participants” in the law school context.

47. There was less feedback on the proposal for a requirement that law schools offer opportunities to work in teams. The law societies that commented on this issue were supportive. Negative comments received from other contributors questioned whether there was any need for this new requirement since teamwork is naturally integrated in the curriculum of most or all law schools.

48. There is no doubt that professional communication skills are necessary upon entry to practice, although they will continually develop over the course of a legal career. In the Committee’s view, i) applicants for entry to a bar admission program should already have a foundation in professional communication skills (they should not be first introduced in a bar admission program); and ii) this is a notable omission in the National Requirement.

49. As discussed above, the fact that some, or possibly all law schools may already be teaching these skills does not affect the need to establish minimum standards in the National Requirement. Also, it should be noted that the standards set out in the National Requirement are exceptionally high level and do not impose requirements for how the knowledge and skills



should be taught (with the exception of a dedicated course requirement for Ethics and Professionalism).

### **Recommendation**

50. Upon consideration of the feedback on the wording of the proposed professional communications skill, and reflection on how it is situated within the Oral and Written Legal Communication section (B. 1.3), the Committee has revised its proposal to simplify the requirement.

51. Instead of a new clause e) in B. 1.3, as proposed in the Discussion Paper, the Committee has revised its proposal to amend the existing clause a), as follows:

#### **1.3 Oral and Written Legal Communication**

The applicant must have demonstrated the ability to:

- a. communicate clearly, professionally and effectively in the English or French language;
- b. identify the purpose of the proposed communication;
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- d. effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.

52. As was proposed in the Discussion paper, the Committee recommends that the Academic Program section be amended to add a clause requiring law schools to make available to students *“opportunities, integrated into the curriculum, to collaborate and work in teams”*.

53. These recommended amendments can be found in the appended National Requirement document at section B. 1.3 (p. 36 in this report) and C. 1.6 (p. 39 in this report).

### **Call to Action 28**

54. The Truth and Reconciliation Commission Call to Action 28 (“CTA 28”) urges Canadian law schools:

*“.. to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will*



*require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.*<sup>8</sup>

55. It is a shared responsibility of the Federation, provincial and territorial law societies, and law schools to transform the relationship between legal professionals and Indigenous peoples. Just as the law societies have undertaken initiatives to advance the Indigenous intercultural competence of lawyers in their jurisdictions (in response to Call to Action 27), the law schools have been working to establish foundational competence in their graduates. There is no doubt that law schools are responding to CTA 28, and often in ambitious and creative ways.<sup>9</sup>

56. Most important in the development of the preliminary proposals for addressing CTA 28 in the National Requirement was meaningful consultation with Indigenous groups and individuals. The Committee received input on the content that might be provided in law school and the best way to deliver the content, as well as the burden such requirements might place on Indigenous faculty and the capacity of the law schools to deliver.

57. Highlights of the input the Committee received before developing its preliminary proposals in the Discussion Paper include the following.

- i) The wording of CTA 28 is not as important as deciding what will result in meaningful legal education and competence in this field.
- ii) Reconciliation is best served by weaving the content and themes throughout the curriculum (i.e. in Family, Property, Torts, Constitutional, Trusts etc.), relying not just on Indigenous faculty, but asking non-Indigenous faculty to learn and to update their course content as needed. This approach will, over time, normalize the content as part of a Canadian legal education and also has the advantage of lessening the pressure on Indigenous faculty.
- iii) The only content that should be taught exclusively by Indigenous faculty is Indigenous law/legal orders, although some contributors thought that it was possible for this content to be taught by non-Indigenous faculty who have lived experience with the subject matter as well as Indigenous-led teachings.
- iv) Requiring content on Indigenous law/legal orders will integrate this system of laws into Canadian legal education, and has the potential effect of fundamentally altering how students perceive the law throughout their careers.
- v) There is value to a stand-alone “introductory” course, especially while the pre-law education system improves its curriculum on these topics which will eventually result

<sup>8</sup> Truth and Reconciliation Commission of Canada: Calls to Action, online [here](#).

<sup>9</sup> See CCLD [2023 Update on Canadian Law Schools Responses to TRC Calls to Action](#)



in a better informed first year class.<sup>10</sup> In addition, an introductory course may provide context and history that is necessary for students' learning in substantive law courses on Indigenous law. However, there are a number of disadvantages of a mandatory dedicated course.

- The diversion of Indigenous faculty to teach a mandatory first year course keeps them from applying their expertise in more advanced courses, which is especially concerning given the current scarcity of Indigenous faculty.
- There is a risk of segregating the content and the faculty; students seem more resistant to receiving the information when it is presented in a single mandatory course.
- The mandatory courses tend to be taught by junior Indigenous faculty who are particularly impacted by this resistance and negativity.
- Prescribing a dedicated course does not allow for the evolution of the curriculum as law students gradually enter law school better educated on Canadian colonial history and the ongoing harms endured by Indigenous peoples of Canada.

58. Based on its research and the input received, the Committee proposed in its Discussion Paper amendments requiring integration of the content throughout the curriculum and permitting, but not prescribing, a mandatory course. The proposed amendments included:

- i) content on Indigenous legal orders, issues, perspectives and contexts under the Substantive Legal Knowledge section of the National Requirement, both in the introduction speaking to the interrelationship of different areas of legal knowledge and in the sub-categories of Foundations of Law, Public Law of Canada and Private Law Principles;
- ii) a new Substantive Legal Knowledge category addressing Indigenous Law and Legal Orders;
- iii) a new clause in the Academic Program section requiring that the overall program demonstrate integration of Indigenous legal issues and perspectives, where applicable, throughout the curriculum; and
- iv) revisions to the Ethics and Professionalism section to require content on ethical duties related to Indigenous peoples (discussed in a separate section below).

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<sup>10</sup> A stand-alone assessment tool will likely remain especially important for NCA students, most of whom start their Canadian legal education without any basic knowledge of Canadian colonial history and issues facing Indigenous peoples of Canada.





## Feedback received

59. The Committee is very grateful for the feedback received; it was carefully considered in deciding how to mediate between different points of view, with the purpose of the National Requirement in mind.

60. The Committee noted general support for the proposal to require integration of Indigenous content throughout the curriculum; and to permit but not require a dedicated course, leaving that decision to the discretion of the law schools. This support was consistent from law societies, law schools and members of the Indigenous legal community.<sup>11</sup>

61. Some contributors expressed concern that new law students would not have the grounding and baseline historical, socio-economic and socio-political knowledge needed to absorb the more advanced content, without a required introductory course. This is a reality that will need to be balanced against the multiple drawbacks of requiring a dedicated introductory course (expressed in feedback both before and during the consultation), including the impact on Indigenous faculty.

62. As the TRC's Calls to Action are gradually included in elementary, secondary and post-secondary education, the Committee hopes and expects that each first-year law class will enter with more background knowledge. The Committee appreciates that, currently, law schools may find that new students lack basic knowledge needed to engage with the more advanced required content (Indigenous and Aboriginal law, for example) and so may decide to develop and mandate an introductory course. Some of this training is also available through The Path program, offered by the Canadian Bar Association. The Committee notes that the NCA may consider The Path as an option as it works to ensure that its candidates comply with the National Requirement.

63. The Committee also received feedback on whether Indigenous legal orders should be included in the required content for Canadian legal education. Some contributors strongly argued for inclusion, while others cautioned against requiring the teaching of Indigenous legal orders in law schools. Several contributors pointed to the shortage of faculty members with training in a particular Indigenous legal order (or orders) to make that content a requirement in every law school. Other contributors raised the concern that Indigenous legal orders must be taught according to the Indigenous legal and ethical principles that govern their instruction and sharing, including the consent and partnership of the Indigenous nation, people, or community; and that few law schools currently have the capacity to meet these requirements. Adding such an obligation in the National Requirement may be possible in the future, but would require intensive consultation with Indigenous communities and an assessment of necessary supportive structures within the law schools (faculty capacity and ethical protocols).

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<sup>11</sup> See Appendix C for a full list of contributors of input on the options and preliminary proposals presented in the Discussion Paper. The Committee wishes to express its deep gratitude, in particular, to the Indigenous individuals and groups who generously contributed their time and thoughts to this consultation, including guidance from the Federation's Indigenous Advisory Council.



64. There was support in the feedback for the inclusion of content related to Indigenous law, as a separate category of substantive legal knowledge within the National Requirement. The term Indigenous law is used here to refer to a conceptual or analytical category of law and is distinct from the substantive content of a specific Indigenous legal order. The Committee also noted support for the inclusion of content on Indigenous legal theories and methodologies. Indigenous legal theories might include theories related to Indigenous legal orders such as their revitalization and application, the relationship between Indigenous legal orders, and the relationship between Indigenous legal orders and Canadian law. Indigenous legal methodologies might include methodologies and specific methods for the study, revitalization and application of Indigenous legal orders. Indigenous legal theories and methodologies are distinguishable from the substantive content of a specific Indigenous legal order, though Indigenous legal theories and methodologies may be informed or structured by an Indigenous legal order.

65. The Committee received feedback that the use of terms Indigenous “issues”, “perspectives”, and “contexts”, in the preamble to the Substantive Legal Knowledge section and elsewhere in the preliminary proposals, may have the effect of minimizing the importance of content related to Indigenous law. The Committee received, for example, a comment that the inclusion of “Indigenous perspectives” may be read in a limited fashion through the Supreme Court of Canada’s use of that phrase in its Aboriginal law jurisprudence under s. 35 of the *Constitution Act, 1982*.

66. Along with this feedback was the suggestion that the content should either fall into the category of Indigenous law or Canadian law as it relates or applies to Indigenous peoples and, for clarity, should be described in that way; further that Indigenous ‘contexts’, ‘perspectives’, and ‘issues’ will naturally be taught alongside that substantive content as needed to understand the content, but that these aspects should not be included in the requirement. This feedback aligns with other input received from Indigenous members of the legal community in the earlier phase of consultation that the required content related to CTA 28 should focus on substantive law.

67. The Committee also received and considered other relevant feedback, including the following points:

- i) the significance of local contexts to the implementation of the National Requirement, and in particular that the substantive content related to Indigenous law may be determined by the law school’s location;
- ii) the value of the law schools’ diversity of approaches to the inclusion of Indigenous legal education;
- iii) the need to consider appropriate approaches to evaluating law schools’ compliance with the requirements;



- iv) whether or not a dedicated course is mandated, the importance of law students learning about the history of colonialism and the ongoing impacts on Indigenous peoples, and in particular the effects on Indigenous women and girls, children and 2SLGBTQQIA persons;
- v) the importance of including content on treaties and treaty relationships, the relevance of international law, and the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”);
- vi) the importance of including content on Family Law due to the specific impacts of Canadian law on Indigenous women and girls, and Indigenous children, and the significant and enduring harms of the residential school system;
- vii) concern that “sources and authorities” may not be concepts compatible with the teaching of Indigenous legal orders (although other feedback was received that it was important to retain required content on sources and authorities of Indigenous law); and
- viii) concern that the proposed added language “...as it relates to Indigenous peoples” in the subsections on criminal law and administrative law, under Public Law of Canada, connotes a subordinate position for Indigenous peoples.

68. After careful consideration of the feedback received (including some additional feedback referenced below) the Committee has revised some of its proposals for amendments to the National Requirement related to CTA 28. Revisions to the preliminary proposals set out in the Discussion Paper include:

- i) revised wording to focus on Indigenous law and Canadian law as it relates to Indigenous peoples and persons, and removal of the ambiguous terms “issues”, “perspectives”, and “contexts”;
- ii) change to the required content under Foundations of Law from “Indigenous legal orders” to “sources and authorities of Indigenous law” to clarify that, at the current time, instruction on the substance of Indigenous legal orders is not required;
- iii) amended wording in the preamble to Public Law to read “an understanding of the principles of public law in Canada and of their inter-relationships with and application in relation to Indigenous peoples and persons of Canada”, to more accurately describe Indigenous peoples’ interaction with the public law of Canada;
- iv) addition of a definition of “Indigenous law” to distinguish between Indigenous law as a conceptual category of law and Indigenous legal orders;



- v) revised title of the new substantive legal knowledge competency from “Indigenous Law and Legal Orders” to “Indigenous Law” with required content on Indigenous legal theories and methodologies;
- vi) addition of proposed competency on Truth and Reconciliation to include content on the context and history of colonialism in Canada; and
- vii) change to the wording throughout from “Indigenous peoples” to “Indigenous peoples and persons” in order to include Indigenous individuals, and from Indigenous peoples “in” Canada to “of” Canada for clarity.

69. The Committee’s offers several additional comments below.

70. **Family Law and Content on Intimate Partner Violence** – As noted in the Discussion Paper, the Committee received input that Family Law and content on intimate partner violence should be included in the National Requirement. That input was provided both as a general comment on the competency requirements and a more targeted comment in connection with CTA 28, given the specific impacts of Canadian Family Law and the legacy of the residential school system on Indigenous women and children. As noted in the Discussion Paper, the Committee decided not to recommend the addition or removal of any substantive areas of legal knowledge in the National Requirement, other than Indigenous law, until a deeper discussion has taken place with key stakeholders on the continuum of legal education. It expects that Family Law and content on intimate partner violence will be considered at that time. The Committee revisited its decision in light of the consultation feedback on this point, and confirmed that it was inclined toward this approach.

71. **Foundations of Law** - In response to the concerns discussed regarding the teaching of Indigenous legal orders, and to clarify that only the aspects that are foundational to an understanding of Indigenous law are intended to be taught under this section, the Committee has changed the proposed wording from “Indigenous legal orders” to “sources and authorities of Indigenous law”. The intention is to include Indigenous law as a component of the Foundations of Law, alongside common law and equity, statutory construction and analysis, and the administration of law, and to provide a starting point for students to understand the more advanced content (as is the intention with the other aspects of Foundations of Law).

72. It has also proposed a definition of Indigenous law be added to the Definitions section, primarily to distinguish between Indigenous legal orders and the broader category of Indigenous law. The Committee considered including a more detailed definition of Indigenous law but decided that approach was inconsistent with the high-level nature of the National Requirement. It has aimed to provide sufficient guidance in this report without being overly prescriptive in the National Requirement standards, allowing law schools substantial discretion to determine the curriculum and mode of delivery.



73. **Public Law of Canada** – In the Discussion Paper, the Committee proposed adding to the subclause on constitutional law specific content related to s. 35 of the *Constitution Act, 1982* and s. 91(24) of the *Constitution Act, 1867*, which is foundational to an understanding of the public law of Canada as it relates to Indigenous peoples and persons. Instruction on s. 35 of the *Constitution Act, 1982* would include content related to Aboriginal rights, Aboriginal title, and treaty rights. Further, the list is not exclusive and does not foreclose additional content related to the public law of Canada, such as other constitutional acts (e.g. the *Manitoba Act, 1870* and the *Natural Resources Transfer Acts*), the relevance of international law, and UNDRIP. (Note also the inclusion of UNDRIP in the proposed section on Truth and Reconciliation, discussed below.)

74. **Indigenous Law** - The Committee recommends one new category of substantive legal knowledge, Indigenous Law. As noted above, the Committee received feedback that instruction on Indigenous legal orders is not appropriate or feasible at this time. The title of the proposed new category has been changed from “Indigenous Law and Legal Orders” to “Indigenous Law”. The substantive requirement in that section is limited, for the current time, to an understanding of Indigenous legal theories and methodologies. The preliminary proposal in the Discussion Paper also included content under this new section on “sources and authorities”. The Committee has revised its proposal, so that “sources and authorities” now resides under Foundations of Law (i.e. “sources and authorities of Indigenous law”) as discussed above.

75. The Committee considered whether the inclusion of “sources and authorities of Indigenous law” under the Foundations of Law was sufficient, and whether the stand-alone section on Indigenous Law was redundant and potentially confusing (especially since it includes only required content on legal theories and methodologies). It concluded that maintaining the Indigenous Law section, as well as the content under Foundations of Law, would make clear that:

- i) Indigenous law exists separate and apart from Canadian law;
- ii) instruction is required on the more complex topics of specific theoretical and methodological approaches to Indigenous law beyond its inter-relationship with Canadian law; and
- iii) the content under the Indigenous Law section may develop if and when the necessary operational and legal and ethical requirements are in place.

76. **Truth and Reconciliation competency** - As noted earlier, the Committee received feedback that students may struggle to understand the application of substantive law to Indigenous peoples and persons without an understanding of the context and history of colonialism in Canada. Recognizing that this content might not be addressed as part of substantive legal knowledge if not explicitly required, the Committee recommends adding a separate section on Truth and Reconciliation to address, specifically): i) the history and legacy of residential schools; ii) UNDRIP; iii) Aboriginal-Crown relations; iv) concepts used to justify European sovereignty over Indigenous lands and peoples, including the Doctrine of Discovery



and *terra nullius*; and v) the impact of Canadian law on Indigenous women, girls and 2SLGBTQQIA persons. These subjects are included in the TRC's Calls to Action (in particular Calls to Action 28 and 45) and reflected in the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

77. This content may be woven through the curriculum or included in a dedicated course, at the discretion of the law schools, although the Committee sees a place for these topics in both the Foundations of Law and Indigenous Law sections of the National Requirement.

### Recommendations

78. The Committee recommends the following amendments to the National Requirement (ordered as they appear in the National Requirement) to foster truth and reconciliation and in response to CTA 28, which are revised from the proposals in the Discussion Paper in response to the feedback received and further deliberation.

- i) Add definition of "Indigenous law" added to A.1 as follows: "'Indigenous law' refers to a conceptual or analytical category of law and is distinct from the substantive content of a specific Indigenous legal order." (see amendment at p. 34 in this report)
- ii) Add required competency, *Truth and Reconciliation*, at B.3 to include: the history and legacy of residential schools; UNDRIP; Aboriginal-Crown relations; concepts used to justify European sovereignty over Indigenous lands and peoples; and systemic discrimination against Indigenous women, girls and 2SLGBTQQIA people. (p. 37 in this report)
- iii) Add under Foundations of Law at (now) B.4.1b, "sources and authorities of Indigenous law". (p. 37 in this report)
- iv) Add wording in introduction to Public Law of Canada at (now) B.4.2, to require understanding of principles of public law "and of their inter-relationships with and application in relation to Indigenous peoples and persons of Canada". (p. 38 in this report)
- v) Revise (now) B.4.2 a under Public Law of Canada, regarding constitutional law, to include additional detail on the required content in connection with Indigenous peoples, as follows: "the constitutional rights of 'Aboriginal' peoples under section 35 of the *Constitution Act, 1982* and Parliament's legislative authority over 'Indians and lands reserved for them' under section 91(24) of the *Constitution Act, 1867*." (p. 38 in this report)
- vi) Revise wording in introduction to Private Law Principles at (now) B.4.3 to require understanding of "how those principles and their application relate to Indigenous peoples and persons of Canada...". (p. 38 in this report)



- vii) Add required Substantive Legal Knowledge competency at (now B.4.4), *Indigenous Law*, as follows: “The applicant must have demonstrated an understanding of Indigenous legal theories and methodologies.” (p. 38 in this report)
- viii) Add requirement under Academic Program, C.1.7 as follows: “The academic program integrates content throughout the curriculum, where applicable, on the ways in which Canadian law relates to Indigenous peoples and persons.” (p. 39 in this report)

79. These proposed amendments are supplemented by related proposed content under the Ethics and Professionalism section of the National Requirement (B.2), discussed below.

### ***Ethics and Professionalism***

80. Ethics and Professionalism is the only field in the National Requirement for which a course dedicated to the related knowledge and skills is mandated. The Ethics and Professionalism section (B.2) specifies the knowledge and skills which the applicant to a bar admission program must have demonstrated, as follows:

#### **B. 2. Ethics and Professionalism**

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes:

##### **2.1 Knowledge of:**

- a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with:
  1. circumstances that give rise to ethical problems
  2. the fiduciary nature of the lawyer's relationship with the client;
  3. conflicts of interest;
  4. the administration of justice;
  5. duties relating to confidentiality, lawyer-client privilege and disclosure;
  6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and members of the public; and
  7. the importance and value of serving and promoting the public interest in the administration of justice.
- b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
- c. the range of legal responses to unethical conduct and professional incompetence; and



- d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.

## 2.2 Skills to:

- a. identify and make informed and reasoned decisions about ethical problems in practice; and
- b. identify and engage in critical thinking about ethical issues in legal practice.

81. In its Discussion Paper, the Committee proposed two additions to the numbered list of specific duties under 2.1.a:

- i) reference to the Discrimination and Harassment provisions in the Model Code, adopted in October 2022, as follows -

*“duties relating to discrimination and harassment pertaining to colleagues, employees, clients or other persons, including the unique challenges experienced by Indigenous peoples”*; and

- ii) reference to the anticipated amendments to the Model Code of Professional Conduct to address Call to Action 27 (which speaks to law societies but otherwise mirrors the content in CTA 28), currently under consultation,<sup>12</sup> as follows: *“duties relating to Indigenous peoples in Canada”*.

82. The intention of this proposal was to include Ethics and Professionalism content related to significant new duties in the Model Code (current and anticipated). It was expected that the wording “duties relating to Indigenous peoples” would be reviewed and likely revised once the Model Code amendments in response to Call to Action 27 are finalized; although the timelines for these projects do not line up, the addition of this wording signals the intention to include this content.

## Feedback received

83. Although there was overall support for this approach, the Committee took note of the following input:

- i) other new duties have been added to the Model Code, such as technological competence, that have not been added to the list in 2.1.a;
- ii) the new proposed duties overlap with broader ethical duties already described in this section;

<sup>12</sup> See [Consultation Report](#), November 28, 2023





- iii) although a placeholder, with the intention of incorporating by reference the requirements under Call to Action 27/28 once the Model Code rules are finalized, the wording “duties relating to Indigenous peoples” is unclear;
- iv) the duty should be expanded to refer to intercultural competence (broader duty related to effective delivery of legal services to diverse populations);
- v) including ‘EDI’ topics in the Ethics and Professionalism content will have a chilling effect on its integration into other courses;
- vi) the detailed list under 2.1.a should be removed to allow more flexibility in developing course curriculum based on the broader descriptions in clauses 2.1 a-d; and
- vii) 2.1.b should be deleted because it is encompassed in 2.1.a.

84. The Committee discussed the purpose of the detailed list in 2.1.a and the history of its development. It concluded, based in part on input received, that while it was useful to provide this guidance when the Ethics and Professionalism content was initially proposed by the Implementation Committee in 2011, the list has become somewhat unbalanced over time, requiring instructors to cover particular topics while leaving many others out.

85. Now that Ethics courses are fully implemented in all law schools, and faculty have developed significant expertise in this field, in the Committee’s view the law schools should have more discretion to decide on the course content within the broad strokes of the knowledge component in 2.1.a. It is noted that the remaining clauses, 2.1.b-d, which do not include this kind of detail, are sufficient to describe categories of knowledge to be taught. For that reason, the Committee has revised its proposal and recommends that the detailed list under 2.1.a be removed.

86. The Committee does not agree that 2.1.b should be deleted as it references beneficiaries of ethical duties (i.e. “clients, the courts, other legal professionals, law societies, and the public”) which is an important inclusion.

87. Although the Committee has recommended that the detailed list under 2.1.a. be removed, in its view, it is critical that (anticipated) new ethical duties in response to Call to Action 27 be reflected in the National Requirement and that a foundation for this knowledge be laid in law school, given the unique position and history of Indigenous peoples in Canada. As such, it recommends that an additional clause be added, after 2.1.b., as follows: “*2.1 Knowledge of...c. the nature and scope of a lawyer’s duties related to Indigenous peoples and persons of Canada as part of ongoing efforts to foster truth and reconciliation.*” The wording of this clause has been revised in response to the feedback and, as noted, will likely be reviewed again once the Model Code rules are finalized.



88. In response to input proposing content on duties related to the delivery of legal services to diverse populations more broadly, related rules are proposed in the recent Model Code consultation report and so may also be included in the Model Code. However, in the Committee's view these new rules, if adopted, will be adequately covered under 2.1.b, at the instructor and law school's discretion, which references the lawyer's duties to the public.

89. Last, the Committee recommends that the clause under Academic Program which requires a dedicated Ethics course (C. 1.4) be amended to specify that the course must be 3 credits, as follows: "*The academic program includes instruction in ethics and professionalism in a 3-credit course dedicated to those subjects and addressing the required competencies.*" Note that a definition of "credit" has also been proposed. The requirement that the Ethics course be 3 credits is currently applied by the Approval Committee, although not included in the National Requirement. It should be noted that this proposal was not included in the Discussion Paper or subject to consultation.

### Recommendation

90. The Committee makes the following revised proposals for amendments to the Ethics and Professionalism section (B.2) and Academic Program section (C 1.4) pertaining to ethics and professionalism content:

- i) remove the detailed list under B. 2.1.a. (p. 36 in this report);
- ii) add a new clause, B. 2.1 c., to include ethical duties pertaining to truth and reconciliation, reading "*the nature and scope of a lawyer's duties to Indigenous peoples and persons of Canada as part of ongoing efforts to foster truth and reconciliation*" (p. 36 in this report); and
- iii) revise C.1.4 to require a dedicated "3-credit" course in ethics and professionalism (p. 39 in this report; the definition of "credit" is in A.1 at p. 34 in this report).

## OTHER RECOMMENDATIONS

91. The following recommendations to Council were considered by the Committee as part of its review, but do not require amendments to the National Requirement.

### *Law School Programs Sandbox*

92. The Committee considered whether there would be merit in allowing the Approval Committee to consider and approve proposals from the law schools for innovative programs that diverge from the National Requirement. The goals in creating a law school programs "sandbox" would be to: i) encourage innovation, especially to enrich or improve access to legal education; ii) create an option for law schools seeking increased flexibility with a particular purpose; and iii) provide an avenue for data collection on alternative approaches to legal education.



93. To achieve these goals without compromising the core educational standards set out in the National Requirement, proposals that deviate from the Substantive Knowledge and Skill Competencies required in Section B of the National Requirement would not be considered; only proposals including elements diverging from the Academic Program and Learning Resources requirements would be eligible for consideration (Section C, e.g., number of credits/years, mode of study, physical resources). It is essential that all applicants to bar admission programs have demonstrated the required knowledge and skills.

94. As the National Requirement is a very high-level standard with significant flexibility already built in, it is expected that proposals for non-compliant programming would be exceptional, and that a sandbox option would not result in a large volume of applications. A ‘blue-sky’ discussion by the Committee gave rise to a few examples of the kind of proposals that might be considered given the criteria proposed: i) reducing the credit hours/number of years required in law school to be replaced with skills training; ii) reducing the in-person requirement to allow Indigenous students to remain close to their communities; and iii) a joint proposal from a law school and a law society to mesh theoretical and practical training.

95. The Committee’s preliminary recommendation also contemplated that, even if proposals meet the broad criteria, the Approval Committee would retain the authority to decline proposals based on any concerns that the proposed program fails to meet the spirit and intent of the National Requirement.

96. This initiative would not require an amendment to the National Requirement. If Council approves of the concept for further development, Terms of Reference would be developed for consideration by Council, based on the broad terms discussed herein.

### **Feedback received**

97. All of the law societies that commented on the proposal approved of the concept with the following additional comments from several law societies: the Law Society of Ontario suggested establishing a window for applications and collecting data on the success of programs; the Law Society of Manitoba emphasized the importance of all graduates being eligible for bar admission programs; and the Law Society of Saskatchewan questioned the Federation’s capacity to implement robust oversight over the sandbox.

98. Most other contributors who commented were supportive. Several questioned why a sandbox would be needed if the National Requirement sets the correct standards, the risks of compromising those standards, whether there is a need for more flexibility, and the general view that the Federation should not be setting requirements for legal education or the parameters for innovation.

99. In the Committee’s view, the sandbox as contemplated is very low risk and has potential for piloting advancements in legal education, collecting data on the effectiveness of new



approaches, and increasing access to legal education, without compromising substantive educational standards. The parameters would be clearly set out in Terms of Reference to be developed based on the broad criteria and structure referred to above. Council will have further opportunity to comment on Terms of Reference when developed.

100. As with other sandboxes, such as those within law societies, the bulk of the work would lie with the applicants to the sandbox (to answer the Approval Committee's questions and respond to concerns). The volume of applications is not expected to be large given the flexibility already built into the National Requirement. Further, the Approval Committee would retain the authority to reject any application that does not satisfy its concerns, as would Council and the individual law societies.

### **Recommendation**

101. The Committee recommends that Council approve the concept of a Law School Programs Sandbox, with Terms of Reference to be developed for further consideration by Council.

### ***Transition Plan***

102. It is understood that implementation of the amended National Requirement will take time, not only to integrate the new standards into the curriculum, but also to ensure that first year students are able to take all the steps needed to demonstrate the required competencies by the time they graduate. It is important that there be an appropriate period of transition, for both Canadian law schools and the NCA, and that the transition plan is clearly communicated.

103. It is proposed that the law schools be able to demonstrate by January 1, 2029 that their programs meet the new standards, in connection with their spring 2029 graduates; and that the amended standards apply to NCA applicants whose files are ready to be assessed on or after January 1, 2029. The Approval Committee will add questions to the 2025 Law School Report Form to monitor the implementation of the changes.

104. This proposal was not included in the Discussion Paper for comment. It has been considered by the Approval Committee, which felt it was reasonable, as well as the Committee.

105. A few additional and clarifying points:

- Law students starting in September 2025 would ordinarily complete their studies by spring 2028; the spring 2029 deadline is provided to account for joint degree students and students who start in 2025 but take a bit longer to complete their degree.
- For the new experiential learning and teamwork requirements, many NCA students have been practising lawyers so will come into the program with this experience; for those coming straight from law school, it will be assumed that their law schools offer those opportunities.



- The NCA will likely integrate the required Indigenous content into the program at an earlier stage, for a couple of reasons. NCA students will, for the most part, have none of this information unlike most Canadians entering law school, and will benefit from acquiring it as soon as possible; and, most law schools have already started the development of this curriculum or have well-developed curriculum. The NCA will want to develop and offer the content as quickly as possible.

### Recommendation

106. The Committee recommends that Council approve a transition plan requiring that the law schools be able to demonstrate by January 1, 2029 that their programs meet the new standard, in connection with their spring 2029 graduates; and that the amended standards apply to NCA applicants whose files are ready to be assessed on or after January 1, 2029.

## OTHER ISSUES FOR INFORMATION

107. The Committee also considered the following issues, which do not call for a recommendation to Council but are included here for information.

### Wellness

108. Phase 1 of the National Wellness Study, released in fall 2022, identified worrying levels of mental health issues in every segment of the legal profession, but particularly among legal professionals in the early stages of their careers. Recommendations include proposed measures by law schools to promote wellness among law students.<sup>13</sup>

109. The Approval Committee's current practice is to ask the law schools to report on student services including "health, wellness and mental health" resources, which encourages the schools to build this capacity. Section 2.1 of the National Requirement requires that "[t]he 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." Although the provision does not refer to student services, it requires that law schools have adequate resources to meet its objectives and the Approval Committee has included student services, including wellness resources in this assessment. The detailed information that law schools have provided in response demonstrates that student wellness is a high priority and there has been an increase in attention and resources devoted to supporting wellness.

110. The Committee addressed this issue in the Discussion Paper and, although it did not recommend a reference to wellness be added to the National Requirement, it suggested that:

- i) the Approval Committee be asked to consider critically the questions posed in the annual law school report form regarding wellness, with a view to eliciting information

<sup>13</sup> National Wellness Study (December 2022), [online](#); also National Wellness Study, Targeted Recommendations, pp. 13-15, [online](#).



about the dissemination of information to and discussions with students about wellness challenges in the profession; and

- ii) a forum be established, including law societies, law schools and law student representatives, to consider the wellness challenges faced by law students and young lawyers and to develop tools to address them.

111. The comments received on this topic emphasized the urgency of the wellness crisis in the profession and the need for action at all levels. To that end, a wellness forum as proposed in the Discussion Paper was included in the Terms of Reference for the Standing Committee on Wellness, approved by Council in October 2023.

### ***Forum on Continuum of Legal Education***

112. Other than the amendments proposed in response to CTA 28, the recommended changes to the knowledge and skills competency requirements in the National Requirement are minimal: an amendment to Oral and Written Legal Communication to add reference to professional communication skills, and deletion of the detail in Ethics and Professionalism to allow room for both foundational concepts and emerging issues. No additional knowledge or skills competencies have been added, removed or amended (again, other than in response to CTA 28).

113. There appears to be consensus that the foundations for essential skills and knowledge for entry to practice should be established in law school and then further developed through bar admission programs and continuing legal education. However, the details of that continuum of legal education, and the necessary coordination between the various actors in legal education to achieve this goal, require more work outside of the National Requirement review process.

114. As described earlier in this report, the Committee undertook robust consultation during this review with a variety of stakeholders including law school representatives and members of the academy. It became clear that there was preliminary interest between the Committee and the leadership of the CCLD in establishing a forum, in between reviews of the National Requirement, to explore in more depth the continuum of legal education and the potential of competency-based education.

115. That idea was included in the Discussion Paper and generated positive feedback. It was subsequently presented at the Federation meetings in October 2023 and received broad support. Further discussions are underway with the CCLD. When a concrete proposal for how to proceed is developed, it will be brought to Council for review and approval.



## Operational Issues

116. The Committee's mandate includes a review of the content of the National Requirement as well as "the process for assessing compliance" with the National Requirement (Terms of Reference, Appendix A, para. 2).

117. The Approval Committee has considered and plans to proceed with the following operational changes in connection with the assessment of compliance. These changes were not included in the Discussion Paper for comment, and do not require the approval of Council as they are operational matters. They are described here for reporting purposes.

- i) Extension of the approval period from one year to two years (i.e. full annual law school report every two years instead of one) for schools that have no comments, concerns or deficiencies, and for programs that have been approved for at least three years. With over ten years of experience with reviews, the Approval Committee has concluded that most law schools and programs do not need annual reviews. No concerns or deficiencies have been issued to any program in the past three review cycles. Unnecessary annual reviews are an administrative burden for law schools. All schools will be required to prepare a short annual report ensuring any significant changes are reported.
- ii) Extension of authority to Approval Committee to cancel preliminary approval when a school has made no progress after two years toward implementing their plan to create the proposed program or law school. Currently, there is no mechanism to remove preliminary approval from a prospective law school or program.

## SUMMARY OF RECOMMENDATIONS

118. The Committee's recommendations are briefly summarized below.

- i) Revise mode of study provision under Academic Program (C. 1.2) to require that 60 of the 90 required credits be taught in-person; addition of definitions of "credit", "distance learning", "in-person instruction", and "interactive online instruction" in the Definitions section (A.1).
- ii) Include new requirement under Academic Program that the program must offer "students experiential learning opportunities integrated into the curriculum, such as simulations of practical skills, moot court, trial advocacy courses, clinics, and Indigenous law camps." (C. 1.5)
- iii) Amend skills competency under Oral and Written Communication requiring the ability to communicate clearly in English or French to read, "...communicate clearly, professionally and effectively in the English or French language." (B. 1.3 a)



- iv) Include new requirement under Academic Program that the program must offer “students opportunities, integrated into the curriculum, to collaborate and work in teams.” (C. 1.6)
- v) Amend Ethics and Professionalism requirement to remove the numbered list of specific topics under B. 2.1a and add a new clause (new B. 2.1c): ... “the nature and scope of a lawyer’s duties to Indigenous peoples and persons of Canada as part of ongoing efforts to foster truth and reconciliation.”
- vi) Add new section at B.3, “Truth and Reconciliation”.
- vii) Add substantive legal knowledge requirements under “Indigenous Law” and amend existing substantive legal knowledge requirements to include content on Indigenous law and Canadian law as it relates to Indigenous peoples and persons (B.4). Add definition of “Indigenous law” to Definitions section (A.1).
- viii) Include new requirement under Academic Program that the program “integrates content throughout the curriculum, where applicable, on the ways in which Canadian law relates to Indigenous peoples and persons.” (C. 1.7)
- ix) Make various “housekeeping” amendments to improve consistency in wording and style of the National Requirement document (highlighted in appended document).
- x) *No amendment required:* Approve the concept of a Law School Programs Sandbox, with Terms of Reference to be developed for further consideration.
- xi) *No amendment required:* Approve a transition plan requiring law schools and the NCA to be able to demonstrate compliance with the amended National Requirement as of January 2029.





## APPENDIX A

### National Requirement Review Committee

### TERMS OF REFERENCE

1. The Federation of Law Societies of Canada (the “Federation”) establishes a committee to be known as the National Requirement Review Committee (the “Committee”).

#### **Mandate**

2. The mandate of the Committee is to undertake a review of the content of and the process for assessing compliance with the National Requirement and to make such recommendations to the Council of the Federation for amendments as it deems appropriate.
3. In conducting its review, the Committee is to take into consideration changes in legal education and in the practice of law since the National Requirement was developed. The work of the NCA Assessment Modernization Committee, in particular the Competency Profile Development project, must also be taken into consideration. The Committee is further required to have regard to applicable fair access to regulated professions legislation in force in Ontario, Manitoba, Alberta and Nova Scotia.
4. The review is to include robust consultation with key stakeholders including law societies, the Council of Canadian Law Deans and other representatives of the legal academy.

#### **Structure**

5. The Committee will be comprised of not more than 10 nor fewer than 7 members as follows:
  - Two representatives from the Common Law Program Approval Committee (“Approval Committee”)
  - Two representatives from the National Committee on Accreditation (“NCA”)
  - Two representatives from the teaching ranks of the legal academy
  - Two members of Council, one of whom will chair the committee
  - One senior law society staff member involved in admissions
  - At least one member from either the NCA or the Approval Committee must be a dean of a Canadian common law program
  - At least one member who identifies as First Nations, Inuit or Métis

#### **Relationship with the NCA Assessment Modernization Committee**

6. The chair of the Committee shall also serve as an *ex officio* member of the NCA Assessment Modernization Committee to assist with integration of the work of the Competency Profile Development project into the review of the National Requirement.

#### **Resources**

7. The Committee will be provided with senior staff support and sufficient financial resources to permit it to carry out its mandate.



## APPENDIX B

### NATIONAL REQUIREMENT

#### A. STATEMENT OF STANDARD

##### 1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program;
- c. "credit" refers to one hour of teaching each week for a 12- or 13-week semester;
- d. "distance learning" refers to instruction that occurs through non-face-to-face interaction between the instructor and students using asynchronous media and tools, such as recorded lectures, email or conventional mail;
- e. "Indigenous law" refers to a conceptual or analytical category of law and is distinct from the substantive content of a specific Indigenous legal order;
- f. "in-person instruction" refers to instruction that occurs through synchronous, face-to-face interaction conducted with the instructor and students in the same physical location;
- g. "interactive online instruction" refers to instruction that uses online media and tools (e.g., videoconferencing, live chat) which provide opportunities for direct, synchronous interaction between instructors and students; and
- h. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

##### 2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either;

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the



Federation of Law Societies of Canada ("the Federation"); or

- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

## **B. COMPETENCY REQUIREMENTS**

### **1. Skills Competencies**

The applicant must have demonstrated the following competencies:

#### **1.1. Problem-Solving**

In solving legal problems, the applicant must have demonstrated the ability to:

- a. identify relevant facts;
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- c. analyze the results of research;
- d. apply the law to the facts; and
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

#### **1.2. Legal Research**

The applicant must have demonstrated the ability to:

- a. identify legal issues;
- b. select sources and methods and conduct legal research relevant to Canadian law;
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- d. identify, interpret and apply results of research; and
- e. effectively communicate the results of research.



### 1.3. Oral and Written Legal Communication

The applicant must have demonstrated the ability to:

- a. communicate clearly, professionally and effectively in the English or French language;
- b. identify the purpose of the proposed communication;
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- d. effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.

## 2. Ethics and Professionalism

The applicant must have demonstrated an ~~awareness and~~ understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes:

### 2.1. Knowledge of:

- a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. ~~This includes familiarity with:~~
  - ~~5. circumstances that give rise to ethical problems~~
  - ~~6. the fiduciary nature of the lawyer's relationship with the client;~~
  - ~~7. conflicts of interest;~~
  - ~~8. the administration of justice;~~
  - ~~5. duties relating to confidentiality, lawyer-client privilege and disclosure;~~
  - ~~8. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and members of the public; and~~
  - ~~9. the importance and value of serving and promoting the public interest in the administration of justice.~~
- b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
- c. the nature and scope of a lawyer's duties to Indigenous peoples and persons of Canada as part of ongoing efforts to foster truth and reconciliation;
- d. the range of legal responses to unethical conduct and professional incompetence; and



- e. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.

## 2.2. Skills to:

- a. identify and make informed and reasoned decisions about ethical problems in practice; and
- b. identify and engage in critical thinking about ethical issues in legal practice.

## 3. Truth and Reconciliation

The applicant must have demonstrated an understanding of the context and history of all forms of colonialism in Canada, including:

- a. the history and legacy of residential schools;
- b. the *United Nations Declaration on Rights of Indigenous Peoples*;
- c. Aboriginal-Crown relations;
- d. concepts used to justify European sovereignty over Indigenous lands and peoples, such as Doctrine of Discovery and *terra nullius*; and
- e. systemic discrimination against Indigenous women, girls and 2SLGBTQQIA people.

## 4. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

### 4.1. Foundations of Law

The applicant must have demonstrated an understanding of the foundations of law, including:

- a. principles of common law and equity;
- b. sources and authorities of Indigenous law;
- c. the process of statutory construction and analysis; and



- d. the administration of law in Canada.

#### 4.2. Public Law of Canada

The applicant must have demonstrated an understanding of the principles of public law in Canada and of their inter-relationships with and application in relation to Indigenous peoples and persons of Canada, including:

- a. ~~the Canadian constitutional law of Canada~~, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles, and ~~the rights of Aboriginal peoples of Canada including Aboriginal peoples' constitutional rights~~ the constitutional rights of "Aboriginal" peoples under section 35 of the *Constitution Act, 1982* and Parliament's legislative authority over "Indians and lands reserved for them" under section 91(24) of the *Constitution Act, 1867*;
- b. Canadian criminal law; and
- c. ~~the principles of~~ Canadian administrative law.

#### 4.3. Private Law Principles

The applicant must have demonstrated an understanding of the principles that apply to private relationships, and how those principles and their application relate to Indigenous peoples and persons of Canada, including:

- a. contracts;
- b. torts; and
- c. property law.

#### 4.4. Indigenous Law

The applicant must have demonstrated an understanding of Indigenous legal theories and methodologies.

### C. APPROVED CANADIAN LAW DEGREE

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:



## 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.
- ~~1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.~~
- 1.2 The course of study must include at least 60 credits (out of 90) of in-person instruction. The remaining 30 credits may consist of in-person instruction, interactive online instruction or distance learning. A blend of the modes of delivery can be integrated throughout the 90 credits to suit the goals of the program.
- 1.3 Holders of the degree have met the competency requirements.
- 1.4 The academic program includes instruction in ethics and professionalism in a 3-credit course dedicated to those subjects and addressing the required competencies.
- 1.5 The academic program offers students experiential learning opportunities integrated into the curriculum, such as simulations of practical skills, moot court, trial advocacy courses, clinics, and Indigenous law camps.
- 1.6 The academic program offers students opportunities, integrated into the curriculum, to collaborate and work in teams.
- 1.7 The academic program integrates content throughout the curriculum, where applicable, on the ways in which Canadian law relates to Indigenous peoples and persons.
- 1.8 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of post-secondary education at a recognized university or CEGEP.

## 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.





## APPENDIX C

### Contributors of Input to National Requirement Review

Input on scope of review, in response to September 2022 communiqué*	Input on development of proposals re: Call to Action 28*	Input on preliminary proposals in Discussion Paper*
Canadian Bar Association Canadian Association of Law Teachers Canadian Association for Legal Ethics Association for Canadian Clinical Legal Education National Association of Women and the Law and Luke's Place Roundtable for the Legal Education Continuum Law21 Federation of Ontario Law Associations Toronto Lawyers Association Family Lawyers Association Nicholas Bala (Queen's) Deanne Sowter (Osgoode) Robert Flannigan (USask)	Indigenous Bar Association Val Napoleon (UVic) John Borrows (UVic) Patricia Barkaskas (UVic) David Milward (UVic) Sarah Morales (UVic) Naiomi Metallic (Dalhousie) Richard Devlin (Dalhousie) Constance MacIntosh (Dalhousie) Sarah Simon (Dalhousie) Karen Drake (Osgoode) Douglas Sanderson (U of T) Brenda Gunn (U of M) Mark Kruse (U of M) Aimée Craft (UOttawa) Lindsay Borrows (Queen's)	Law Societies of Ontario, Manitoba, Saskatchewan, Alberta and Yukon Nova Scotia Barristers' Society Credentials Committee ( <i>meeting</i> ) Federation's Indigenous Advisory Council Council of Canadian Law Deans Canadian Association of Law Teachers Canadian Association for Legal Ethics Association for Canadian Clinical Legal Education Advocates' Society Indigenous Bar Association Native Women's Association of Canada Family Law Section of the Canadian Bar Association ( <i>meeting</i> )
*written comments only	Chantelle Johnson (CLASSIC) *oral comments only	Federation of Ontario Law Associations Law 21 Federation of Asian Canadian Lawyers (BC) UOttawa Common Law Program



		<p>Windsor Law – Academic Planning Committee</p> <p>Windsor Law - Indigenous Legal Studies</p> <p>Athabasca University</p> <p>Dean Erika Chamberlain (Western Law)</p> <p>Dean Trevor Farrow (Osgoode)</p> <p>Legal scholars: Joanna Harrington (UAlberta), Deanne Sowter (Osgoode), Larissa Speak (Bora Laskin), Robin Sutherland (Bora Laskin), Harry Arthurs (Osgoode), Constance Backhouse (UOttawa), Niko Harris (UBC), Michelle Leering (Queen's), Audrey Fried (Osgoode), Aimée Craft (UOttawa), Karen Drake (Osgoode) (<i>meeting</i>), Karine Millaire (Université de Montréal), Aaron Mills (McGill) and Alan Hanna (UVic).</p> <p><i>*written, except where indicated that input was provided in a meeting</i></p>
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