



Communiqué

Federation Initiates Review of National Requirement

September 23, 2022

The National Requirement Review Committee (“NRRC”) of the Federation of Law Societies of Canada is interested in your views on the **National Requirement**, the standard that specifies the competencies and skills graduates of Canadian law school programs and internationally trained graduates and lawyers must have acquired to be admitted to law society admission programs in the Canadian common law jurisdictions. As the committee embarks on a comprehensive review of the standard, you are invited to share your experience with the National Requirement and your ideas about issues we should be considering.

Overview of the National Requirement

Approved in 2012, the National Requirement applies to graduates of all Canadian common law programs and to assessment by the National Committee on Accreditation (“NCA”) of the qualifications of internationally trained applicants and graduates of Canadian civil law degree programs who wish to be admitted to a law society in a common law jurisdiction. It also applies to applications for the approval of new Canadian common law degree programs. The National Requirement came into force in 2015.

Two primary factors led to the decision to develop the National Requirement: the adoption of fair access to regulated professions legislation in several provinces and requests for approvals of new law schools.

Fair access legislation requires regulatory authorities to have transparent, objective, impartial, and fair admission requirements for both domestically and internationally trained applicants. The adoption of fair access legislation in Ontario and Manitoba and the expectation that other jurisdictions would follow suit had immediate implications for the NCA, to which the law societies in the Canadian common law jurisdictions have delegated responsibility for assessing the credentials of internationally trained applicants for entry to bar admission programs. Although the mandate of the NCA is to assess the credentials of candidates who received their legal education outside of Canada to determine whether they are equivalent to those of Canadian-educated candidates, until adoption of the National Requirement there was no national standard for approval of Canadian law school programs. This also presented challenges for responding to proposals for new law school programs.

The development and implementation of the National Requirement, which in addition to specifying the skills and competencies required of domestically and internationally trained graduates sets out the academic and learning resources required of Canadian law schools, provides an objective and fair standard against which to assess internationally trained lawyers and graduates and proposals for new law school programs in Canada.

Review of the National Requirement

When the National Requirement was approved, it was agreed that the standard should be reviewed no less often than every 5 years. An early review, prompted in part by issues arising from consideration of an application from Trinity Western University for approval of a law school program, resulted in two minor amendments to the National Requirement to address concerns raised by the Canadian Common Law Program Approval Committee (“Approval Committee”), the body responsible

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for assessing compliance with the standard. The specific issue prompted by the Trinity Western law school application – whether the National Requirement should include a non-discrimination provision – was deferred at the request of the Federation Council.

In late 2021, the Council of the Federation established the NRRC to conduct a comprehensive review of the National Requirement and the process for assessing compliance with the requirement. The NRRC is comprised of members of the Federation's Council, law society senior staff and members of the legal academy. The committee is chaired by Jacqueline Horvat, Treasurer of the Law Society of Ontario and member of the Federation Council for Ontario. The other members of the committee are:

- Priya Bhatia (Executive Director, Professional Development & Competence, Law Society of Ontario)
- Pinder Cheema, K.C. (Chair, National Committee on Accreditation, Council member nominated by the Law Society of British Columbia)
- Adam Dodek (Professor, University of Ottawa, Faculty of Common Law)
- Ian Holloway (Canadian Common Law Program Approval Committee, Dean, Faculty of Law, University of Calgary)
- Christian Hurley (National Committee on Accreditation, Director of Legal Education, Law Society of Newfoundland and Labrador)
- Erin Kleisinger, K.C. (Chair, Canadian Common Law Program Approval Committee, Council member nominated by the Law Society of Saskatchewan)
- Sébastien Lebel-Grenier (Professor, Université de Sherbrooke, Faculté de droit)
- Tracey Lindberg (Professor, University of Victoria, Faculty of Law)

The NRRC's Terms of Reference call for robust engagement with stakeholders including the law societies and the legal academy. The NRRC is committed to a transparent process that ensures that stakeholders are kept informed about the committee's work and are provided with opportunities to provide input throughout the review. Information on the review will be provided through the **Federation's website** and periodic newsletters such as this. The NRRC will also be reaching out to stakeholders throughout the review to get their input on specific issues and ultimately on draft recommendations.

Although the NRRC was established in October 2021, it is still in the very early stages of its work. One of the first issues faced by the NRRC involved the relationship between the review of the National Requirement and the ongoing work on the development of a competency profile by the Federation's NCA Assessment Modernization Committee ("NCA AMC"). The NRRC's mandate requires the committee to take into consideration the work of the NCA AMC, including its competency profile development project. Stakeholders may be aware that consultation on an early draft of the competency profile provoked strong reactions in the academic community and concerns about the potential impact on the National Requirement and, through it, Canadian law school programs. It has now been clarified that while relevant to the work of the NRRC, the profile is intended to underpin changes in the way NCA candidates are assessed and will not determine the content of the National Requirement.

The NRRC's next task is to identify issues relating to the content and application of the National Requirement. Some issues, such as questions about the in-person learning requirement (the National Requirement specifies that the course of study in Canadian common law programs "consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students") are likely obvious. During the pandemic all

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Canadian law schools moved for some time to online modes of instruction in whole or in part, accentuating existing questions about the requirement that two thirds of the law school programs be delivered in-person or through interactive online methods. This review will also provide an opportunity to consider how to address the call from the Truth and Reconciliation Commission for law students and lawyers to receive Indigenous cultural competency training.

To understand issues involved in the application of the National Requirement the committee will be consulting with the Canadian Common Law Program Approval Committee and the NCA. It is also important for members of the NRRC to hear from members of the legal academy, representatives of law societies and other stakeholders. We anticipate conducting more formal consultations on specific issues during the review but, as we begin the work of identifying and prioritizing issues, we would welcome your preliminary input. Please feel free to respond to any of the following questions or to provide any other input you wish.

- Are there specific issues you would like the committee to consider during its review of the National Requirement?
- Are there skills or knowledge competencies or other requirements that are missing from the National Requirement?
- Are there aspects of the National Requirement that should be revised or eliminated?

The NRRC invites you to share any preliminary comments you have by writing to **smackenzie@flsc.ca** before November 30, 2022.