

Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique  
c/o Professor Stephen G.A. Pitel, Faculty of Law, Western University  
1151 Richmond Street, London, Ontario, N6A 3K7

November 14, 2022

Federation of Law Societies of Canada  
World Exchange Plaza  
1810 - 45 O'Connor Street  
Ottawa, Ontario  
K1P 1A4

Sent by e-mail to smackenzie@flsc.ca

Dear National Requirement Review Committee members,

Re: Federation Initiates Review of National Requirement

The Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique (CALE/ACEJ) is a federal not-for-profit corporation whose members are academics, lawyers and regulators interested in topics related to ethics and professionalism in the Canadian legal profession. CALE/ACEJ seeks to encourage and facilitate debate on issues of ethics and professionalism in Canada and to increase awareness about those issues in the public, the profession and the judiciary.

Through your Communiqué dated September 23, 2022, you have asked for preliminary input relating to your review of the National Requirement. CALE/ACEJ appreciates having been consulted and we are pleased to respond.

We note that at this stage the focus of your review is broad and open-ended. While we can offer some general thoughts at this point, it is very likely that we will have additional thoughts on more specific issues as they emerge. We are therefore pleased that you have committed at the outset "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." To us it is critical that this commitment is met throughout the process and we encourage you to err on the side of more rather than less notice and communication.

We also think that it is important to further clarify the relationship between your review and the recent draft competency profile considered by your NCA Assessment Modernization Committee. In your Communiqué you state that this profile is "relevant" to the work of your committee. We welcome additional explanation of this statement.

At this stage, we urge you to maintain two core aspects of the National Requirement. The first is that applicants have competency in the area of legal ethics and professionalism. The second is that contained in C.1.4, namely that "[t]he academic program includes instruction in ethics and

professionalism in a course dedicated to those subjects and addressing the required competencies.” It has been several years since the debates about whether these competencies could satisfactorily be acquired in some other way, such as through interstitial learning across other courses. Those debates should not be repeated. CALE/ACEJ remains committed to the importance of a dedicated course.

One issue we suggest that you consider is whether in respect of “the ethical requirements for the practice of law in Canada” the current level of detail and specificity in B.2.a, b and c should be maintained. We note that for many other fields of law such as criminal law and contract law, no additional dimensions are set out. A similar approach could be adopted for legal ethics and professionalism. In our view, a broader and open-ended approach to the competencies allows law schools and individual instructors greater flexibility in developing and evolving their course of study on legal ethics and professionalism to best fit modern circumstances.

A second issue we suggest you consider is whether intercultural competency should be explicitly listed as one of the required competencies. Increasing attention is rightly being paid to whether lawyers have the appropriate abilities to serve clients or interact with others who are members of different cultural groups. To the extent that this is required by the rules of professional conduct, it should equally be a core competency for applicants. In your Communiqué you mention that you will consider “Indigenous cultural competency training”. We welcome and support this consideration. In our view, you should consider as essential elements of this competence the skills and topics listed in the Truth and Reconciliation Commission Calls to Action 27 and 28 (the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, Indigenous law, Aboriginal-Crown relations, conflict resolution, human rights, and anti-racism). Additionally and separately, intercultural competencies that support the effective provision of legal services to diverse populations should be considered.

Yours truly,

A handwritten signature in black ink, appearing to read "Stephen Pitel". The signature is written in a cursive, flowing style.

Prof. Stephen G.A. Pitel  
President, CALE/ACEJ