

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

October 2, 2023

Federation of Law Societies of Canada
World Exchange Plaza
1810 - 45 O'Connor Street
Ottawa, Ontario
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Sent by e-mail to consultations@flsc.ca

Dear National Requirement Review Committee members,

Re: National Requirement Review Discussion Paper issued June 26, 2023

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.

In your above-referenced Discussion Paper you have asked for input relating to your ongoing review of the National Requirement (para. 101). CALE/ACEJ appreciates having been consulted and we are pleased to respond. We limit our response to issues relating to legal ethics and professionalism.

In our initial submissions on the review we indicated that we considered it important that you clarify the relationship between your review and the ongoing work of your NCA Assessment Modernization Committee. In the Discussion Paper you state that committee "is developing a competency profile for NCA candidates. It will be consistent with the National Requirement, although more detailed for the purpose of developing assessment tools" (para. 4 and n. 3). We appreciate this clarification, particularly on the point that the competency profile for NCA candidates will not lead to a correspondingly increased level of detail in the formulation of the National Requirement.

However, we remain concerned about the level of detail being retained in B.2.1(a). As we explained in our initial submissions, 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. A broader and open-ended approach to the competencies would allow law schools and individual instructors greater flexibility in developing and evolving their course on legal ethics and professionalism to best fit modern circumstances. In contrast, a

lengthy listing of subsidiary elements will significantly limit instructors in their determinations about what to cover. In our view, B.2.1(a) would be improved by retaining the first sentence and deleting the numbered list of specifics.

In the alternative, if you conclude that the list of elements in B.2.1(a) should be retained, we believe that an additional element should be included. Our initial submissions had asked you to consider whether intercultural competency should be explicitly listed as a required competency. In the Discussion Paper you suggest that this might come to fall within the broader notion of “duties relating to Indigenous peoples in Canada” (para. 81). In our view, this competency is of sufficient importance and is sufficiently distinct from other lawyers’ duties such that it should (i) be explicitly referenced and (ii) extend beyond the context of Indigenous peoples. Intercultural competencies that support the effective provision of legal services to diverse populations should be expressly required by means of additional language in B.2.1(a).

In either case, we are also of the view that B.2.1(b) should be deleted because it is redundant. Everything that might fall within the language in B.2.1(b) is already caught by the broad language of the first sentence of B.2.1(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”. To include B.2.1(b) in addition risks confusion about the scope of both provisions.

We would welcome the opportunity to meet with some or all of your members to further explain and discuss these submissions.

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