



Council of Canadian Law Deans  
Conseil des doyens et  
des doyennes des facultés  
de droit du Canada

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**November 20th, 2009**

By e-mail and ordinary mail: [dmillar@weirfoulds.com](mailto:dmillar@weirfoulds.com)

Mr. W. A. Derry Millar, Treasurer  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N6

Dear Mr. Millar:

**Re: Final Report of the Federation of Law Societies of Canada  
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans with regard to the Federation of Law Societies of Canada's Task Force Report on the Common Law Degree. It is our understanding that the Report and its Recommendations have been referred to the provincial and territorial Law Societies for consideration and potential adoption. In view of the implications of the Report and its Recommendations for Canada's law schools, we believe it is important for the CCLD to share our perspective and our concerns with you.

**OUR INVOLVEMENT WITH THE TASK FORCE AND ITS WORK**

It would be helpful to begin by describing the process followed by the Federation of Law Societies in undertaking this work and the relationship that the Canadian Law Deans have had with this process. As you will know, the Task Force was established in the fall of 2007 to address two significant issues: i) the criteria to be applied in the consideration of applications to establish new law schools in Canada; and ii) the criteria to be applied by the National Committee on Accreditation in the consideration of the qualifications of foreign trained lawyers, the latter within the context of provincial legislation in some provinces mandating fair processes for the consideration of such applications.

Since both of these issues necessarily involved a consideration of the existing understanding of a common law degree in Canada, it was natural that these issues would engage the interest and attention of legal academia and in particular the interests and expertise of the Canadian Law Deans.

The Task Force that was established by the Federation of Law Societies of Canada had an appreciation of the CCLD's unique role and expertise. In November of 2007 the Chair of the Task Force, John Hunter, Q.C., met with the CCLD to inform the Law Deans of the Task Force of its

composition, its mandate, its contemplated processes and its interest in a degree of engagement with the Law Deans. I think it is fair to say that the Deans were surprised to learn of the establishment of the Task Force, its plans and its composition. Given the issues to be addressed, we were also surprised to learn that there was no interest on the part of the Federation in including representatives of the Canadian Law Deans or legal academia on the Task Force. This was all the more surprising given the active and constructive contribution that the Canadian Law Deans have made to the work of the National Committee on Accreditation, one of the central subjects for Task Force consideration. Notwithstanding this, the CCLD agreed in November of 2007 that it would offer to work constructively with the Task Force. We established a Working Group of Law Deans, composed of Dean Nicholas Kasirer of McGill Law School, Dean Patrick Monahan of Osgoode Hall Law School and myself to provide information, assistance and advice to the Task Force. We were, at our own expense, essentially at the disposal of the Force whenever it felt the need of our involvement. Consistent with this commitment, we met whenever the Task Force requested us to do so, and provided the collective perspective on the CCLD through various reports and letters from the CCLD to the Task Force. While we were not always in agreement with the need for this project or with Task Force thinking, I believe that our engagement was undertaken in a spirit of respect for the members of the Task Force and their assignment. We believe that the Task Force engaged with us in a similar spirit of mutual respect. The Task Force made it clear that it had complete confidence in the state of legal education in Canada, and in the quality of the existing law schools, and that there was no plan to 'remake' law schools in a new image. This expression of confidence in our law schools inspired a genuine commitment on the part of the CCLD to assist the Task Force with its work. In this spirit we did our best to provide a clear understanding of the state of legal education in Canada and the implications of the various options that we understood to be under consideration by the Task Force.

This is particularly evident in our submissions to the Task Force in response to its October 2008 Consultation Paper. In a series of communications throughout the process, including two lengthy submissions to the Task Force in June of this year, (the latter two are attached for your consideration), we shared our perspective on matters of critical importance to legal education and to the Task Force. Concurrent with these submissions we communicated a willingness to continue to be engaged with the Task Force. We heard nothing further until the Task Force had completed its work and submitted its Report.

While some of the perspectives provided by us to the Task Force were incorporated in its final Report, one critical concern of the Canadian Law Deans was ignored and some matters of concern were introduced in the final Report without any request for input from the CCLD or any other group. I will make further reference to these matters later in the letter.

## **OUR PERSPECTIVE IN RELATION TO THE REPORT AND ITS RECOMMENDATIONS**

As you will know, the Task Force has produced a series of recommendations that seek to establish a new set of standards for an 'approved common law degree' in Canada. While we have offered suggestions to the Task Force on alternatives to this approach, we acknowledged the Task Force's commitment to this objective in our June 1, 2009 letter to the Task Force. Indeed, in that letter we signaled support for the 'competencies' approach being contemplated by the Task Force. Such an approach is consistent with much modern thinking about legal education, and is being incorporated into the curricula of a number of our law schools in Canada. We urged the Task Force to follow this 'competencies' approach comprehensively, as had been recommended by the Law Society of Upper Canada in its own submission to the Task Force in 2008. We would have welcomed such an approach. For reasons that are not clear to us, the Task Force elected not to do so, and in particular in relation to its recommendations regarding a mandatory, stand-alone Legal Ethics and Professionalism, has recommended an approach that is contrary to its own previously stated approach to competencies.

This deviation in approach is more than a matter of pedagogical debate or semantics. While the Canadian law Deans generally have little objection to a competencies-based approach, a requirement related to a specific new mandatory course is more problematic. A 'competencies' approach confirms the legal profession's confidence in our law schools, and in our ability to fashion programs that can meet our educational objective of delivering a rigorous academic education for our students while at the same time providing us with the flexibility and imagination to design a curriculum that will ensure that the legal profession's expected competencies are learned by our students. The dictate of any specific 'course' requirement makes the opposite statement. It 'directs' legal education, and prevents law schools from achieving 'competency' in our students through flexibility, imagination and innovation, the specific responsibilities of legal educators, the specific prerogative of legal education and the very work that the Task Force signaled was being well done in our law school. In addition, we are surprised and concerned that the Task Force has gone further, identifying what it expects – perhaps requires – to be the content of this mandatory course. Regardless of the course under consideration in this regard, we see this whole approach as unprecedented and inappropriate.

Second, to our surprise, the Task Force elected to include in its final Report a recommendation that establishes a compliance requirement for a law school to be 'approved'. This was a surprise to us for two reasons. First, while there was a passing reference to 'compliance' in the Task Force's 2008 Consultation Paper, the Task Force did not set out any questions in relation to compliance or compliance mechanisms and did not invite any feedback on this issue. Second, and perhaps more important from the perspective of the Canadian law Deans, we were advised that the Task Force intended to leave this issue to another day and another body. We are troubled that a recommendation of this sort, on a matter of critical importance to legal education in general and to the Canadian Law Deans in particular, would be included in the final Report with no dialogue with us.

The Canadian Law Deans have concerns with additional aspects of the Report. These include the adoption of some 'legal knowledge' competencies whose meaning we have struggled to understand, as well as a variety of technical, or 'institutional' matters that, unresolved, could jeopardize various aspects of our existing programs. In our view these are also matters of sufficient importance that any approval of the Report and Recommendations should await their clarification and resolution.

## **THE APPROACH WE RECOMMEND**

The decisions your law society will be making in relation to the Report and its Recommendations will necessarily be undertaken within the context of your responsibility to regulate in the public interest. In our view, this responsibility can best and only be achieved through a process of engagement with legal education, and in particular with the Canadian Law Deans, in advance of making any decisions regarding the Task force Report and its Recommendations. The work of the Task Force is important to the legal profession and to Canada's law schools. It is the most significant examination of the nexus between our law schools and the legal profession in over 40 years. The Task Force has done much good work, but in our opinion it has not gotten all of the questions right. And it is important, with a project of this significance, that both law societies and the legal education community make every effort to make the best decisions possible. We believe that it is possible to develop, together, a set of recommendations that can strengthen the Report that is before you for consideration. There is ample time to do this. We note that, even within the context of the Report's own recommended timetable, implementation would not take place until 2015.

For these reasons, we recommend that you defer any decisions in relation to the Report and its Recommendations. We recommend that a dialogue be undertaken between the law societies and the Law Deans to work out the difficulties presented by the Task Force's Report and Recommendations and to put in place the necessary refinements and clarifications to optimize the Task Force's work and

make it meaningful, effective and beneficial for legal education, for the legal profession and for the public interest. We are prepared to make a commitment to such a project. It would be a signal that those who are privileged to be charged with the regulation of the legal profession in the public interest wish to strive for the 'best' in this aspect of their regulatory responsibilities. It would also honour the work of the Task Force, whose members have made a genuine and heartfelt effort to solve some seemingly intractable problems facing the legal profession of today.

Failing this, we urge that any adoption of the Report and its Recommendations be 'in principle' only. There are many unresolved issues related to the Report, and we believe that these must be resolved before law societies give their imprimatur to the features of any new regulatory regime. This is again a responsibility to ensure that the model you approve best serves the public interest. In our view the best process to address the unresolved issues would be a joint committee of the legal profession and the Council of Canadian Law Deans, co-chaired, and with equal representation from these two communities of interest. We are committed to undertaking this work in a principled and timely way, with a view to developing – together - the best model we possibly can.

At the present time, some Canadian Law Deans are unable to support the Report and its Recommendations in their current form. We believe that with good will from the Deans and from the leaders of the legal profession, differences can be bridged and a suitable model can be developed. Such a model can meet the immediate challenges faced by the legal profession in ways that will build upon the continuing evolution and strengthening of legal education in Canada. It can also reinforce the strong and positive relationship between our profession and our law schools.

Sincerely,

A handwritten signature in black ink that reads "Brent Cotter". The signature is written in a cursive, flowing style.

W Brent Cotter  
President  
Council of Canadian Law Deans